

11-17-2008

## State v. Adamcik Clerk's Record v. 4 Dckt. 34639

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IN THE  
**SUPREME COURT**  
OF THE  
**STATE OF IDAHO**

STATE OF IDAHO,

Plaintiff and  
Respondent,  
**VS.**

TOREY MICHAEL ADAMCIK,

Defendant and  
Appellant.

HONORABLE PETER D. McDERMOTT District Judge

Appealed from the District Court of the Sixth  
Judicial District of the State of Idaho, in and  
for Bannock County.

Dennis A. Benjamin

Attorney for Appellant  
Lawrence G. Wasden

Attorney for Respondent

Filed this	day of	
20		
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Clerk		
Deputy		

34639

Supreme Court Case No. 34639

Volume IV

Defendant-Appellant.

Appeal from the District Court of the Sixth Judicial District of the State of Idaho  
in and for the County of Bannock.

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,

Plaintiff,

vs.

TOREY ADAMCIK,

Defendant.

Case No. CR-06-17984-FE-C

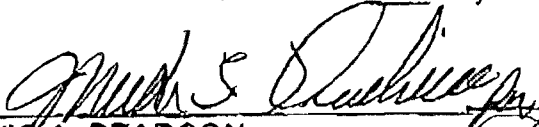
STIPULATION RE: INDEPENDENT  
LAB TESTING & CHAIN OF CUSTODY

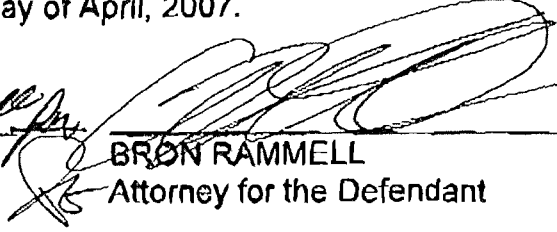
COMES NOW, the State of Idaho, by and through VIC A. PEARSON,  
Chief Criminal, Deputy Prosecuting Attorney for Bannock County, Idaho, and BRON  
RAMMELL, Attorney for the Defendant, and hereby stipulate as follows:

1. Det. Mark Ballard will prepare the items entered as Exhibits in State v.  
Brian Draper, i.e. the Calvin Klein Shirt and Puma Glove, which were  
returned, for shipping to Forensic Laboratory Crime Scene  
Technologies LLC.

- 735
2. The Bannock County Prosecutor's Office will arrange for the Calvin Klein Shirt and Puma Glove to be shipped by FedEx to Forensic Laboratory Crime Scene Technologies LLC from Bannock County using the Dial May & Rammell FedEx account.
  3. That the Idaho State Police Forensic Laboratory, 700 S Stratford Drive, Meridian, ID 83642, will prepare and ship items M32A, M2A, M33A, M2H, M1I, M32B, M33B, and M34B (known bloodstains of Brian Draper, Cassie Stoddart and Torey Adamcik, fingernail clippings, and all oral swabs respectively) by FedEx to Forensic Laboratory Crime Scene Technologies LLC, 11125 Flintkote Ave., Suite A, San Diego, CA 92121, (858) 550-1700, using the Dial May & Rammell FedEx account.
  4. That Forensic Laboratory Crime Scene Technologies LLC will FedEx all items received back to Det. Mark Ballard, Bannock County Sheriff's Department, 4322 N Old Hwy 91, Pocatello, ID 83204, (208) 236-7111, upon completion of their independent testing but no later than May 23, 2007 per the Order of Judge Peter D. McDermott.
  5. That the chain of custody of these items will not be disputed.

DATED this 16<sup>th</sup> day of April, 2007.

  
VIC A. PEARSON,  
Chief Criminal Deputy  
Prosecuting Attorney

  
BRON RAMMELL  
Attorney for the Defendant

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Bron M. Rammell, Esq.  
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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,

Plaintiff,

vs.

TOREY ADAMCIK,

Defendant.

CASE NO. CR-2006-17984-FE-AA

**MOTION TO STRIKE OBJECTIONS  
TO JUROR QUESTIONNAIRE**

COMES NOW the Defendant, through counsel, and moves to Strike the State's objections to the "juror Questionnaire submitted by the defense.

This motion is based on the following:

1. The State's objections do not identify any grounds or state the basis for any objection with "particularity" as required by rule *ICR 47*; *ICRP 7(b)(1)*.
2. Without identifying the rule of law upon which the State's objection (which is really a motion to strike or disallow) is based, the defendant is prevented from preparing a response in particularity.
3. "Wide latitude" is to be given attorneys in asking questions to determine whether a potential juror should be challenged either peremptorily or for cause. *State v. Severance* 132 Idaho 637 (Ct. App. 1999); *State v. McKeehan* 91 Idaho 808,819 (1967).
4. The "goal of voir dire is to assure retention of a fair and impartial jury." *Severance at 638*. And, while the court has large discretion over voir dire;

5. Questions that are directly relevant to the qualifications of a juror, that are reasonably calculated to discover the **possible** existence of a ground for challenge, and that have not been previously answered should be allowed. *Id.* See also ICR24(b) [emphasis added].<sup>1</sup>

WHEREFORE, Defendant requests that the State's objections to the questionnaire submitted in this matter be stricken and the questionnaire as submitted be sent.

DATED this 23<sup>rd</sup> day of April, 2007.

DIAL, MAY & RAMMELL, CHTD.  
Attorneys for Defendant



BRON M. RAMMELL

CERTIFICATE OF SERVICE

I certify that on this date a copy of the *Motion to Dismiss* was served on the following named persons at the addresses shown and in the manner indicated.

Bannock County Prosecutor  
P.O. Box P  
Pocatello, ID 83205-0050

☐ Facsimile  
☐ Hand Delivery  
☐ U.S. Mail

DATED this 23<sup>rd</sup> day of April, 2007



BRON M. RAMMELL

<sup>1</sup> The actual rule is framed in the negative, instead of the positive as set forth in this document. Thus, the rule identifies when a venire question should be "disallowed." By clear implication, however, if a question meets all qualifications, it should be allowed in order to meet the goals of voir dire set forth by the Idaho's Supreme Court.

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
IN AND FOR THE STATE OF IDAHO, COUNTY OF BANNOCK

STATE OF IDAHO,	)	
	)	CASE NO. CR2006-17984FE-AA
Plaintiff,	)	
	)	
vs.	)	MINUTE ENTRY AND ORDER
	)	
TOREY MICHAEL ADAMCIK,	)	
[REDACTED]	)	
06-14-1990	)	
	)	
Defendant.	)	
_____	)	

Defendant appeared before the Court this 23<sup>rd</sup> day of April, 2007, for further proceedings with counsel Bron Rammell. Vic A. Pearson, Chief Deputy Bannock County Prosecuting Attorney, appeared on behalf of the State of Idaho.

At the outset the State submitted a Motion to Amend the Prosecuting Attorney's Information and submitted an Amended Prosecuting Attorney's Information.

The Court received oral argument of respective counsel.

NOW, THEREFORE, IT IS HEREWITH ORDERED the State's Motion to Amend the Prosecuting Attorney's Information is GRANTED.

Defendant was thereafter arraigned on the Amended Prosecuting Attorney's Information.

When asked by the Court, the Defendant stated that his true name is as shown on the Amended Prosecuting Attorney's Information. Reading of the Amended Information was waived and a certified copy of the same was handed to counsel for defendant.

Defendant entered a plea of NOT GUILTY to the charge 1 COUNT MURDER IN THE FIRST DEGREE, Idaho Code §18-4001-02-03(a), and NOT GUILTY to the charge 1 COUNT CONSPIRACY TO COMMIT MURDER IN THE FIRST DEGREE, Idaho Code §§18-4001-02-03(a) and §18-1701.

The Court reiterated the Jury Trial will commence in Twin Falls County on Wednesday, May 30, 2007.

The Court thereafter received oral argument on Defendant's Motion for Defendant's parents to have unrecorded, private conversations with Defendant twice weekly at the Bannock County Jail.

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IT IS FURTHER ORDERED Defendant's Motion for unrecorded, private conversations between Defendant and his parents at the Bannock County Jail is PARTIALLY GRANTED and if the Sheriff's Office can comply, Defendant shall have 1 weekly unrecorded, private conversation with his parents, for up to 1 hour. Said conversations will commence the week of May 7, 2007. The parents were advised they will be subject to search which will be at the discretion of the Bannock County Sheriff's Office.

The Court thereafter received oral argument pursuant to Defendant's Motion to Dismiss and/or Remand for another Preliminary Hearing.

IT IS FURTHER ORDERED the Court has reviewed the Preliminary Hearing Transcript and Defendant's brief and finds Judge Robert Natfz, Magistrate, presiding over the Preliminary Hearing was very careful to articulate the evidence he considered as well as what evidence he did not consider in binding Defendant over to District Court. Judge Natfz advised he did not consider the testimony of Detective Andy Thomas nor

interviews with Defendant Brian Draper. At the conclusion of the Preliminary Hearing Judge Naftz found two (2) crimes had been committed. The Court further advises that a written decision will be prepared by the Court and submitted to respective counsel; however, Defendant's Motion to Dismiss and/or Remand for another Preliminary Hearing is DENIED.

The Court thereafter inquired if the pretrial motions currently scheduled Friday, May 4, 2007, could be reset commencing Wednesday, May 2, 2007 at 9:30 a.m., and counsel concurred. The Hearing scheduled Friday, May 4, 2007 is VACATED.

Thereafter, in chambers, Defendant waiving his presence, counsel for Defendant, Bron Rammell and Vic A. Pearson, discussed the State's Objections to Juror Questionnaire:

IT IS FURTHER ORDERED the State's Objection to Juror Questionnaire is granted and denied as follows:

Page 2, Question #4 GRANTED will be STRIKEN.

Page 8, Question #10 DENIED – question will remain

Page 9, Questions 12, 13, 14, 15 GRANTED and will be STRIKEN.

Page 10, Question 19 & 5 DENIED – will remain

Page 12, Under media coverage/knowledge of the case, paragraph explanation –[and convicted] – re Brian Draper to be STRIKEN

Page 14, Question #15 and continuing on Page 15, A & B – GRANTED – will be STRIKEN.

Page 15, Questions #18, 19, 20, and 21 – DENIED – will remain

Page 16, Questions #22 and 23 – DENIED – will remain

Page 17, Question #6 – GRANTED and entire question and subparts which go into Page 18 are STRIKEN.

Page 20, Question #6 – GRANTED and shall be amended to add Conspiracy to Commit Murder in the First Degree.

Page 22, Questions #21 and 22 – DENIED – will remain

Page 23, Questions 23 and 24 – GRANTED – will be STRIKEN.

IT IS FURTHER ORDERED the questions shall be consecutively numbered.

The Court thereafter advised respective counsel that on Voir Dire, counsel will challenge the panel for cause as a whole. Thereafter request in camera Voir Dire. The State and then Defense counsel.

On May 15, 2007, proposed jurors will complete the Juror Questionnaire, the Questionnaires will thereafter be returned to Bannock County for copying for counsel. A hearing will thereafter be held to review the questionnaire with counsel.

IT IS FURTHER ORDERED counsel for Defendant shall redo the Questionnaire and submit same to the State and upon agreement of the State it shall be sent to Twin Falls.

IT IS SO ORDERED.

DATED this 23<sup>rd</sup> day of April, 2007.

  
PETER D. McDERMOTT  
District Judge

Copies to:  
Mark L. Hiedeman/Vic A. Pearson  
Aaron Thompson/Bron Rammell  
Jerry Woolley, Twin Falls County Jury Commissioner



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**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 TOREY ADAMCIK )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

**ORDER**

On March 16, 2006, Defendant Torey Adamcik filed a Motion to Dismiss the charges filed against him in the case of *State v. Adamcik*. In support of this Motion, Adamcik filed the Affidavit of Bron Rammell and Memorandum in Support. In the alternative, Adamcik requested that this matter be remanded back to Magistrate Court for a new preliminary hearing. Defendant Adamcik asserts that there were at least eight separate errors that occurred at his preliminary hearing, with the Honorable Judge Naftz presiding, which necessitate a remand. When reviewing these errors cumulatively, Adamcik argues, the reasons to remand his case for a new preliminary hearing are even more compelling. *Memorandum in Support of Motion to Dismiss*, p. 2. Adamcik asserts to the Court that the holdings of reviewing courts on these eight reasons sufficiently support grounds for dismissal or remand. *Id.* Adamcik asserts the following:

1. Adamcik's Fifth and Sixth Amendment rights were violated at the preliminary hearing because he was denied the opportunity to effectively cross-examine witnesses and present evidence.

2. The Magistrate Court failed to sever the proceedings as required under the Constitution and the United States Supreme Court's decision in *Bruton v. United States*.
3. The Magistrate Court held that hearsay evidence was admissible, thereby violating Adamcik's Constitutional rights and the rights afforded a criminal defendant under Idaho Criminal Rule (ICR) 5.1.
4. Adamcik was denied the Constitutional right to call and confront witnesses because of the State's nondisclosure of at least one material witness.
5. The Magistrate Court denied Adamcik's request for a continuance once it was discovered that material evidence was in the State's possession and relied on by the State that had not been disclosed to Adamcik.
6. The Magistrate Court heard and considered the testimony of Detective Andy Thomas regarding statements that Adamcik made during an interview with law enforcement after Adamcik invoked the right to counsel, thereby violating Adamcik's Constitutional rights under the Fifth Amendment to have such statements excluded.
7. The record of the preliminary hearing is incomplete, thus violating Adamcik's rights pursuant to the Fifth Amendment, Idaho Code § 19-812, and ICR 12(g).
8. Extensive publicity in this matter necessitated a continuance of the preliminary hearing so as to avoid undue prejudice to Adamcik.

In addition to the arguments outlined above, other factors such as the substantial media attention focused at the preliminary hearing and its potential to impact any of Adamcik's

constitutional rights, Adamcik's age, education and maturity, the Idaho Criminal Rules that address procedure and substantive rights at preliminary hearings, as well as the standard of review imposed upon this Court have been considered.

#### STANDARD OF REVIEW

Both the Idaho Code and the Idaho Criminal Rules prescribe the manner in which a magistrate will determine whether a felony criminal defendant should be bound over to the district court. ICR 5.1(b) provides, in relevant part, that

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If from the evidence the magistrate determines that a public offense has been committed and that there is probable or sufficient cause to believe that the defendant committed such offense, the magistrate shall forthwith hold the defendant to answer in the district court. The finding of probable cause shall be based upon substantial evidence upon every material element of the offense charged...

Similarly, I.C. § 19-815 provides, in relevant part, that

If, after hearing the evidence adduced at the preliminary examination, the magistrate finds that a public offense has been committed, and that there is probable or sufficient cause to believe the defendant guilty thereof, the magistrate shall enter an order holding the defendant to answer to said public offense...

Further, I.C. § 19-815A provides that

A defendant once held to answer to a criminal charge under this chapter may challenge the sufficiency of evidence adduced at the preliminary examination by a motion to dismiss the commitment, signed by the magistrate, or the information filed by the prosecuting attorney. Such motion to dismiss shall be heard by a district judge.

If the district judge finds that the magistrate has held the defendant to answer without reasonable or probable cause to believe that the defendant has committed the crime for which he was held to answer, or finds that no

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Re: Defendant's Motion to Dismiss and/or Remand

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public offense has been committed, he shall dismiss the complaint, commitment or information and order the defendant discharged.

The district court, on a motion to dismiss, reviews the magistrate's probable cause determination for an abuse of discretion. *State v. Horn*, 101 Idaho 192, 195, 610 P.2d 551, 554 (1980); *State v. Daniels*, 134 Idaho 896, 898, 11 P.3d 1114, 1116 (2000). In order for the magistrate to find probable cause, the State "need only show that a crime was committed and that there is probable cause to believe that the accused committed it; proving the accused's guilt beyond a reasonable doubt is not required." *Horn*, 101 Idaho at 195, 610 P.2d at 554. A magistrate's determination of probable cause is not an abuse of discretion "if under any reasonable view of the evidence, including permissible inferences, it appears likely that an offense occurred and that the accused committed it." *State v. Williams*, 103 Idaho 635, 644, 651 P.2d 569, 579 (1982) (quoting in *Martinez v. State*, 90 Idaho 229, 232, 409 P.2d 426, 427 (1965)); *State v. Behrens*, 138 Idaho 279, 281, 61 P.3d 636, 638 (Ct.App. 2003).

The standard of finding probable cause is well known and is the same for a magistrate at a preliminary hearing as it is for a law enforcement officer out on the street.

In determining whether probable cause existed, the inquiry turns on whether the officer possessed facts which would lead a person of ordinary prudence to entertain an honest belief that the suspect has committed a crime. The officer is entitled to draw reasonable inferences from the facts in his possession... *State v. Montague*, 114 Idaho 319, 321, 756 P.2d 1083, 1085 (Ct.App.1988). The standards for probable cause are not legal technicalities, but instead are the factual and practical considerations of everyday life upon which reasonable and prudent people act. Probable cause deals with the probable consequences of all of the facts considered as a whole. The determination of probable cause does not require certainty of guilt, but rather the probability that the suspect has committed the offense. *State v. Rubio*, 115 Idaho 873, 875, 771 P.2d 537, 539 (Ct.App.1989) (review denied).

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Re: Defendant's Motion to Dismiss and/or Remand

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*State v. Webb*, 118 Idaho 99, 101, 794 P.2d 1155, 1157 (Ct.App. 1990).

Adamcik first asserts that his Constitutional rights were violated because he was denied the opportunity to cross-examine witnesses and present evidence. Notably, in his Memorandum in Support of Motion to Dismiss, Adamcik devoted substantial discussion to the case of *Hurtado v. People of the State of California*, 110 U.S. 516 (1884). The *Hurtado* decision, Adamcik argues, stands for the proposition that a criminal defendant must be afforded Constitutional due process rights at a preliminary hearing, including, among others, the right to counsel and the right to cross examination of witnesses. Adamcik contends that these rights, once denied by the Magistrate Court, cannot be redeemed or reinstated by simply proceeding with a jury trial at the district court level.

Citing to *Chapman v. California*, 386 U.S. 18 (1967), Adamcik argues that it is the State's burden to prove that these Constitutional errors do not constitute reversible error beyond a reasonable doubt. At the preliminary hearing, Adamcik argues, his Constitutional rights were violated because Detective Thomas testified as to what co-defendant Brian Draper told Detective Thomas during custodial interviews. Counsel for Adamcik objected to this testimony, citing to *Crawford v. Washington*, 541 U.S. 36 (2004), but was overruled without explanation. *Crawford*, Adamcik asserts, holds that "where testimonial statements are at issue, the only indicia of reliability sufficient to satisfy constitutional demands is the one the Constitution actually proscribes: confrontation." Accordingly, Adamcik argues, the Magistrate Court was in error in allowing Detective Thomas to testify about what Brian Draper said during Draper's custodial

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interrogations with law enforcement. Because Detective Thomas's testimony comprised a majority of the testimony presented at the preliminary hearing, and because the media and public were open to witness it, Adamcik urges that the Constitutional violations imposed on Adamcik as a result of such testimony are of great significance and present demonstrative cause for dismissal or remand.

Adamcik's analysis and understanding of the Supreme Court's decision in *Crawford* is entirely applicable and provides a well founded argument that Detective Thomas's testimony as to what Brian Draper said or implicated during Draper's videotaped interviews should not have been admissible in determining whether there was probable cause to bind Adamcik over to District Court.

However, Judge Naftz clearly articulated that,

In determining the admissible evidence against Mr. Adamcik, the Court did not consider any of the testimony of Detective Andy Thomas. This was a confession of another person implicating Mr. Adamcik in the commission of a crime. It certainly violates the defendant's rights of confrontation under the Sixth Amendment. So I reiterate that any testimony from Detective Thomas was not considered by this Court in determining probable cause findings.

*Transcript of Preliminary Hearing*, p. 242. Adamcik acknowledges the fact that Judge Naftz recognized Detective Thomas's testimony was inadmissible as to Adamcik in footnote 2 of Adamcik's Memorandum in Support. Although Adamcik asserts that he was denied the right to confront and cross examine witnesses at the preliminary hearing, such an assertion, and the arguments made under *Crawford* would ultimately be mooted by the fact that Judge Naftz did not consider any of Detective Thomas's testimony in considering whether to bind Adamcik over

or not. Even if Adamcik was afforded the opportunity to effectively confront and cross examine Detective Thomas, the Magistrate Court would not have considered such testimony.

Moreover, because counsel for Brian Draper, as an officer of the court, asserted that Brian Draper would assert his Fifth Amendment right against self incrimination if asked to take the stand, Adamcik's right to confront and cross examine Draper himself would have been rendered meaningless. Accordingly, while Adamcik's arguments pursuant to *Crawford* regarding his right to confront and cross examine witnesses are properly asserted, and the Court recognizes the importance of the Constitutional rights a criminal defendant is afforded under the *Crawford* holding, the assertions are inconsequential given Judge Naftz's decision to not consider any of Detective Thomas's testimony, and Brian Draper's decision to assert his Fifth Amendment rights.

Second, Adamcik argues that the Magistrate Court erred in failing to sever the proceedings as required under the Constitution and the United States Supreme Court's decision in *Bruton v. United States*. Adamcik contends that there is no reason why the Constitutional rights outlined in *Bruton* should be given less weight at a preliminary hearing than at the District Court level. Additionally, Adamcik argues that ICR 14 allows a Magistrate Court to sever a case for co-defendants if one or both of the defendants would be prejudiced by not separating the defendants' cases. Again, Adamcik asserts that he was unable to directly cross examine Brian Draper, and that Adamcik's defenses at the preliminary hearing were unjustly focused on objecting to testimony that should have only been admissible against Draper, not Adamcik.

This Court, in accordance with ICR 14 and the U.S. Supreme Court's decision in *Bruton*, has determined that Brian Draper and Torey Adamcik would suffer unfair prejudice if their cases were tried together. The defenses of Draper and Adamcik are clearly in contravention of one another and failing to recognize their antagonistic positions would likely have resulted in the deprivation of a right to a fair trial for both defendants. However, the right to severance is not absolute. Rather, Rule 14 permits a trial court to sever defendants if a party is prejudiced by an otherwise permissible joinder under Rule 8(a). *State v. Anderson*, 138 Idaho 359, 63 P.3d 485 (Ct.App. 2003).

Idaho Criminal Rule 14 provides,

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If it appears that a defendant or the state is prejudiced by a joinder of offenses or of defendants in a complaint, indictment or information or by such joinder for trial together, the court may order the state to elect between counts, grant separate trials of counts, grant a severance of defendants, or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the state to deliver to the court for inspection in camera any statements or confessions made by the defendants which the state intends to introduce in evidence at the trial.

The hearings on Defendant Draper and Defendant Adamcik's Motions to Sever are not a part of the preliminary hearing transcript in this matter as they were heard before the preliminary hearing began. Counsel for Draper and Adamcik had a continuing objection to the Magistrate Court's decision to deny severance throughout the preliminary hearing.

As Adamcik acknowledges, the Magistrate Court did not have the benefit of knowing that the two Defendant's positions would be in contention until evidence at the preliminary hearing was presented. This became clear, Adamcik states, when Detective Thomas's testimony was



presented and Adamcik continued to object based on his Sixth Amendment right to confront and cross-examine a witness. Again, Adamcik asserts, he was unable to directly cross-examine Defendant Draper because his statements were introduced via Detective Thomas's testimony.

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Once more, it is important to recognize that Judge Naftz did not consider Detective Thomas's testimony to conclude that there was probable cause to bind Adamcik over. Therefore, Adamcik's right to confront and cross examine witnesses, as applied to the need for severance under the *Bruton* analysis is not of consequence. Judge Naftz found probable cause to bind Adamcik over on other grounds. Whether Judge Naftz severed Adamcik's preliminary hearing from Draper's is immaterial because if he had, he would have considered the evidence he found admissible against Adamcik, just on another day.

Next, Adamcik argues that the Magistrate Court erred when it denied Adamcik's request for a continuance once it was discovered that material evidence was in the State's possession and relied on by the State that had not been disclosed to Adamcik. Adamcik contends that he needed more time and preparation to be able to challenge the State's charges against him. Adamcik asserts that the State did not disclose a material witness, Dr. Charles Garrison, or any of Dr. Garrison's notes or reports to Adamcik before the preliminary hearing, thereby preventing Adamcik from subpoenaing a material witness on his own behalf.

Magistrate Courts, at a preliminary hearing, are not bound by technical rules of evidence which govern trials of offenses charged. *In re Hollingsworth*, 49 Idaho 455, 289 P. 607 (1930); *Freeman v. State*, 87 Idaho 170, 392 P.2d 542 (1964). If the State were required to disclose all the witnesses it intended to present and all the evidence connected to such a witness at a

preliminary hearing, then the need for a trial would be obsolete, in essence forcing the same case to be tried twice. The Court recognizes that Dr. Garrison is a material witness in this matter and that Adamcik is entitled to rebut or defend against any evidence connected to Dr. Garrison. This entitlement is not mandated at the preliminary hearing of Adamcik's prosecution, however. The Idaho Supreme Court has repeatedly held that,

A preliminary examination before a committing magistrate is in no sense a trial. The purpose is to obtain the judgment of a magistrate to the effect that a crime has or has not been committed, and if committed that there is reasonable ground to believe that the person accused is guilty of committing the crime. It is not to be expected, nor is it required, that the same formality and precision must obtain in a preliminary examination as is required upon the trial.

*Freeman v. State*, 87 Idaho 170, 392 P.2d 542 (1964).

In addition to the relaxed evidentiary rules imposed on the Magistrate Judge, the Court finds that Adamcik's reasoning for a continuance is inherently flawed. If Adamcik had known of the existence of Dr. Garrison at the time of the preliminary hearing then perhaps Adamcik could have offered good cause to Judge Naftz as to why the hearing should be continued. The Affidavit of Bron Rammell, Adamcik's counsel, states otherwise. Therefore, the Court was unaware of any reason as to why the preliminary hearing should have been continued due to any testimony Dr. Garrison could have provided to change the outcome of Adamcik's hearing. Again, the evidentiary rules for disclosing witnesses, especially expert witnesses and any evidence connected with such a witness is more properly reserved for the trial court.

Next, Adamcik argues that the State did not disclose material and possibly exculpatory information with respect to which Defendant may have done the stabbing with which knife that

the State in possession of at the time of the preliminary hearing, thereby denying Adamcik certain Constitutional rights. Again the same principle as Adamcik's previous argument regarding a continuance of the preliminary hearing based on disclosure of evidence applies to this. The Idaho Supreme Court has held, "While the value to the defendant of the opportunity for discovery through the medium of a preliminary hearing may be an ancillary benefit, such has not risen to a status cognizable as a constitutional right." *State v. Ruddell*, 97 Idaho 436, 546 P.2d 391 (1976). Adamcik's argument that he had a constitutional right to be aware of and confront all of the evidence against him at the preliminary stage of the hearing is therefore misguided. Adamcik appears to recognize that he is not entitled to have a complete disclosure of all relevant evidence at the preliminary hearing, yet argues he should at least be aware of such evidence. This rationale presents two sides of the same coin. Being made aware of material evidence, exculpatory or inculpatory, and having full disclosure of all material evidence is indistinctive. Unquestionably, this right is granted to him at the trial court level.

Adamcik further argues that the State relied on other evidence at the preliminary hearing that necessitated a continuance. Adamcik asserts that Detective Thomas testified as to knives and pictures of knives as well as other items, all evidence that had not been disclosed to Adamcik. Notably, Judge Naftz admonished the prosecution that it was not to present evidence at the preliminary hearing that had not been disclosed to defense counsel. When this evidence was presented, and the court realized that such evidence had not been disclosed to defense counsel, the Court took a recess for lunch and instructed the prosecution to disclose the

information and evidence to defense counsel. Adamcik contends the recess was insufficient time for him to review the evidence and prepare a defense on his behalf.

The Court recognizes that a lunch recess certainly is a constricted time for which Adamcik had to prepare a defense to the evidence admitted while Detective Thomas testified. However, it is again important to note that Judge Naftz did not consider Detective Thomas's testimony when determining there was probable cause to bind Adamcik over. Presumably, this would include any evidence admitted during the course of such testimony. Consequently, the non-disclosure of such evidence prior to the preliminary hearing is of no consequence.

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With respect to Adamcik's argument that Judge Naftz relied on inadmissible evidence to bind Adamcik over because Judge Naftz relied on the videotaped interview of Adamcik and the homemade video the two Defendants made together, the Court will take up such matters at the time of the suppression hearings for those two videotapes. For purposes of the present Motion, however, the Court may rely on *State v. Mitchell*, 104 Idaho 493, 660 P.2d 1336 (1983), which holds that "even if the magistrate erred in relying on evidence at the preliminary hearing that is ultimately determined to be inadmissible, the error is not a ground for vacating a conviction where the appellant received a fair trial and was convicted, and there is sufficient evidence to sustain the conviction." The Court recognizes that Adamcik has not been convicted on any charges in this case. However, the Court also recognizes that if the Court were to find that the videotapes or portions thereof are admissible after the suppression hearings, then judicial economy would best be served by deferring ruling on whether the evidence is admissible or not in this Court instead of remanding Adamcik's entire case to the Magistrate Court.

ORDER

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Re: Defendant's Motion to Dismiss and/or Remand

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**CONCLUSION**

The Idaho Supreme Court has stated:

A preliminary examination before a committing magistrate is in no sense a trial. The purpose is to obtain the judgment of a magistrate to the effect that a crime has or has not been committed, and if committed that there is reasonable ground to believe that the person accused is guilty of committing the crime. It is not to be expected, nor is it required, that the same formality and precision must obtain in a preliminary examination as is required upon the trial.

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*Freeman v. State*, 87 Idaho 170, 392 P.2d 542 (1964). Judge Naftz's decision that there was probable cause to believe that the crime of Murder in the First Degree and Conspiracy to Commit Murder in the First Degree had been committed and that Mr. Adamcik may have committed said crimes, is reasonable and is sustained. The facts of the incident, when considered with permissible inferences from a reasonable view of the evidence, unmistakably support Judge Naftz's decision. Therefore, Defendant's Motion to Dismiss and/or Remand is DENIED.

**IT IS SO ORDERED.**

**DATED this 25 day of April 2007.**

  
**PETER D. McDERMOTT**  
**DISTRICT JUDGE**

**Copies to:**

Bron Rammell, Aaron Thompson  
Mark Hiedeman, Vic Pearson

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ORDER

*State v. Adamcik*

Re: Defendant's Motion to Dismiss and/or Remand

ORIGINAL

2007 FEB 21 AM 9:05

Bron M. Rammell, Esq.  
Aaron N. Thompson, Esq.  
DIAL, MAY & RAMMELL, CHARTERED  
216 W. Whitman/P.O. Box 370  
Pocatello, Idaho 83204-0370  
Phone: (208) 233-0132 Fax: (208) 234-2961  
Idaho State Bar No. 4389  
Idaho State Bar No. 6235

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,

Plaintiff,

vs.

TOREY ADAMCIK,

Defendant.

CASE NO. CR-2006-17984-FE-AA

**AFFIDAVIT OF BRON RAMMELL IN  
SUPPORT OF MOTION TO INSPECT,  
COPY, AND TEST BRIAN DRAPER  
VIDEOTAPE**

STATE OF IDAHO                    )  
  : ss  
County of BANNOCK                )

I, Bron M. Rammell, being first duly sworn, depose and say:

1. I make the following statements based upon my personal knowledge.
2. I am the attorney for Defendant, Torey Adamcik.
3. Since the videotape was disclosed by the State, Affiant has been limited to viewing a copy of the videotape made by the State.
4. The above mentioned copy is in DVD format.
5. In conversations with the Bannock County Sheriff's Office, Affiant was informed that the DVD copy was identical to the original videotape.
6. Further, the State discouraged additional viewing of the original videotape because of alleged "fatigue" in the video.

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7. At the trial of *State v. Brian Draper*, however, the original video was played and counsel for Brian Draper was able to view the original tape for the first time.
8. It quickly became apparent that there are discrepancies and differences in the original videotape and the copy that your Affiant, and thus the Defendant, has received.
9. The State's transcribed version of the words if the videotape are inconsistent with the copy that the defense has received.
10. Additionally, the original videotape "shows" more than the DVD and is more intelligible.
11. Further, Affiant is concerned that the videotape may have been altered, and the defense should have the same access to the videotape that the state has had.
12. Because this videotape is probably the single most important piece of evidence in this case, it is critical that the Defendant have full access to this evidence.
13. Affiant recognizes that the State has an interest in preserving the integrity of the videotape. The Affidavit of John Young is filed simultaneous to this Affidavit, represents that state agents will be welcomed during any inspecting, copying, or testing of the videotape; that no alterations or changes will be made to the video, and that inspecting, copying, and examining should be a fairly simply process.
14. Without the opportunity to examine and review the evidence in this case, the Defendant will be irreparably prejudiced in the preparation of his defense. He will be prevented from developing evidence and ultimately making argument about the true contents of the Draper videotape.
15. The State has already reviewed the videotape numerous times.
16. The Defendant is merely requesting one full review, inspection, and testing of the videotape to ensure that the tape is in fact what the State purports it to be, that it has not been altered or modified, and so that the Defendant can have a complete and proper copy of the information.

756

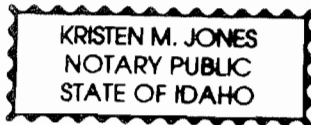
FURTHER AFFIANT SAYETH NAUGHT


DATED this 27 day of April, 2007.

  
\_\_\_\_\_  
BRON M. RAMMELL

SUBSCRIBED AND SWORN to before me, Notary, this 27<sup>th</sup> day of April, 2007.

(Seal)



  
\_\_\_\_\_  
NOTARY PUBLIC OF IDAHO  
Residing in: Pocatello, Idaho  
Commission Expires: 10-11-2012

757



CERTIFICATE OF SERVICE

I certify that on this date a copy of the *Affidavit of Bron Rammell in Support of the Motion to Inspect, Copy, and Test Brian Draper Videotape* was served on the following named personal at the addresses shown and in the manner indicated.

Bannock County Prosecutor  
P.O. Box P  
Pocatello, ID 83205-0050

[ ] U.S. Mail  
[ ☒ ] Hand Delivery  
[ ] Facsimile

DATED this 30 day of April, 2007.

  
DIAL, MAY & RAMMELL, CHTD.

757

7.57 a

ORIGINAL

may  
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Kg

Bron M. Rammell, Esq.  
Aaron N. Thompson, Esq.  
DIAL, MAY & RAMMELL, CHARTERED  
216 W. Whitman/P.O. Box 370  
Pocatello, Idaho 83204-0370  
Phone: (208) 233-0132 Fax: (208) 234-2961  
Idaho State Bar No. 4389  
Idaho State Bar No. 6235

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,

Plaintiff,

vs.

TOREY ADAMCIK,

Defendant.

CASE NO. CR-2006-17984-FE-AA

**MOTION TO INSPECT, COPY, AND  
TEST BRIAN DRAPER VIDEOTAPE**

258  
COMES NOW Defendant Torey Adamcik, through counsel, and moves this Court for an Order allowing Defendant to inspect, copy, and test the videotape made by Brian Draper in this matter at the offices of John Young, located at 2635 Fairway, Pocatello, Idaho, 83201, on or around the 3<sup>rd</sup> or 4th day of May, 2007. This Motion is based upon the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, the Affidavit of Bron Rammell, and the Affidavit of John Young all attached hereto.

WHEREFORE, Defendant requests that the videotape made by Brian Draper be inspected, copied, and tested at the offices of John Young.

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DATED this 30<sup>th</sup> day of April, 2007.

DIAL, MAY & RAMMELL, CHARTERED  
Attorneys for Defendant



BRON M. RAMMELL

CERTIFICATE OF SERVICE

I certify that on this date a copy of the *Motion to Inspect, Copy, and Test Brian Draper Videotape* was served on the following named personal at the addresses shown and in the manner indicated.

Bannock County Prosecutor  
P.O. Box P  
Pocatello, ID 83205-0050

☐ U.S. Mail  
☒ Hand Delivery  
☐ Facsimile

749  
DATED this 30 day of April, 2007.



DIAL, MAY & RAMMELL, CHTD.

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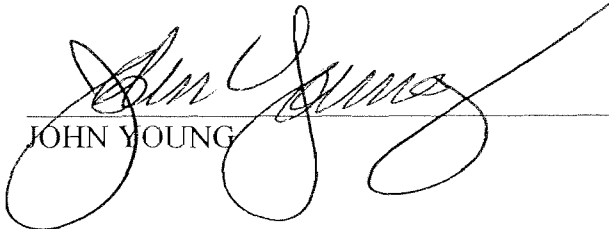
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100-443887-100

AFFIDAVIT OF JOHN YOUNG - CASE NO. CR-2006-17984-FE-AA - PAGE #1

5. In my nearly 20 years' experience, VHS-C tapes are capable of being played dozens of times without noticeable deterioration-of either the tape itself, or the image quality of the content.
  6. Even if played 100 times, any change in the videotape should not be noticeable to the human eye from one playback to another.
  7. It would be highly unusual if any single playing of the tape in well maintained equipment would cause any discernable deterioration of the tape.
  8. That being said, the quality of the equipment used to playback the media can significantly impact a tapes' performance.
  9. Modern equipment, such as that at my facility, should be able to play the tape reliably, and allow for a clean copy to be made to DVD or other media in 1 playback.
  10. While I inspect, examine and copy the Draper videotape, state agents are welcome to be present.
  11. No alterations or changes will be made to the video, and inspecting, copying and examining the videotape should be a fairly simple process.
  12. I will basically be viewing the video to determine if any obvious alterations have been made to it, and to make a quality copy of the video for Dial, May & Rammell Chtd., who has hired me to do so at the rate of \$75/hr.
  13. I would like to do this work on May 3<sup>rd</sup> or 4<sup>th</sup> of 2007.
- Further Your Affiant sayeth naught.

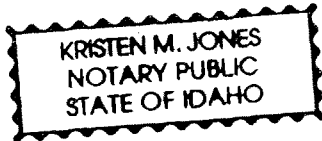
DATED this 30 day of April, 2007.


  
JOHN YOUNG

761

SUBSCRIBED AND SWORN to before me, Notary, this 20<sup>th</sup> day of April, 2007.

[NOTARY SEAL]



  
KRISTEN M. JONES  
NOTARY PUBLIC OF IDAHO  
Residing in: Pocatello, Idaho  
Commission Expires: 10/11/2012

762

Bron M. Rammell, Esq.  
Aaron N. Thompson, Esq.  
DIAL, MAY & RAMMELL, CHARTERED  
216 W. Whitman/P.O. Box 370  
Pocatello, Idaho 83204-0370  
Phone: (208) 233-0132 Fax: (208) 234-2961  
Idaho State Bar No. 4389  
Idaho State Bar No. 6235

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KS

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,

Plaintiff,

vs.

TOREY ADAMCIK,

Defendant.

CASE NO. CR-2006-17984-FE-AA

**MOTION TO CLOSE PRETRIAL  
SUPPRESSION AND EVIDENTIARY  
HEARINGS TO THE PUBLIC AND  
PRESS**

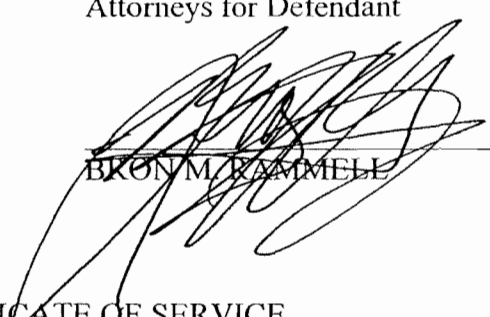
COMES NOW Defendant Torey Adamcik, through counsel, and moves this Court for an Order excluding the public and press from the Pretrial Suppression and Evidentiary Hearings scheduled for May 2, 2007 and thereafter. This Motion is based upon the Fifth and Sixth Amendments of the United States Constitution, *Gannett v. DePasquale*, 443 U.S. 368 (1979), the supporting Memorandum attached hereto, the Affidavit of Bron Rammell attached hereto, and the Court records and file in this matter.

WHEREFORE, Defendant requests that the Pretrial Suppression and Evidentiary Hearings scheduled in this matter for May 2, 2007 and thereafter be closed to the public and the press, and that access to the Transcript of said hearings be temporarily denied until after trial.

763

DATED this 27 day of April, 2007.

DIAL, MAY & RAMMELL, CHARTERED  
Attorneys for Defendant



BRON M. RAMMELL


CERTIFICATE OF SERVICE

I certify that on this date a copy of the *Motion to Close Pretrial Suppression Hearing to the Public and Press* was served on the following named personal at the addresses shown and in the manner indicated.

Bannock County Prosecutor  
P.O. Box P  
Pocatello, ID 83205-0050

☐ U.S. Mail  
☒ Hand Delivery  
☐ Facsimile

DATED this 27 day of April, 2007.



DIAL, MAY & RAMMELL, CHTD.

764



ORIGINAL  
2007 MAY -1 AM 11:47  
Kg

Bron M. Rammell, Esq.  
Aaron N. Thompson, Esq.  
DIAL, MAY & RAMMELL, CHARTERED  
216 W. Whitman/P.O. Box 370  
Pocatello, Idaho 83204-0370  
Phone: (208) 233-0132 Fax: (208) 234-2961  
Idaho State Bar No. 4389  
Idaho State Bar No. 6235

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,  
  
Plaintiff,  
  
vs.  
  
TOREY ADAMCIK,  
Defendant.

CASE NO. CR-2006-17984-FE-AA  
  
**AFFIDAVIT OF BRON RAMMELL IN  
SUPPORT OF MOTION TO CLOSE  
PRETRIAL SUPPRESSION AND  
EVIDENTIARY HEARINGS TO THE  
PUBLIC AND PRESS**

STATE OF IDAHO                    )  
  : ss  
County of BANNOCK            )

- I, Bron M. Rammell, being first duly sworn, depose and say:
1. I make the following statements based upon my personal knowledge.
  2. I am the attorney for Defendant, Torey Adamcik.
  3. Extensive Pretrial publicity has been and continues to be a real threat to the ability of Torey Adamcik to obtain a fair and impartial Trial in this matter.
  4. On April 18, 2007, after a mere 4<sup>1</sup>/<sub>2</sub> hours of deliberation, Co-Defendant Brian Draper was convicted of first degree murder and conspiracy to commit first degree murder.

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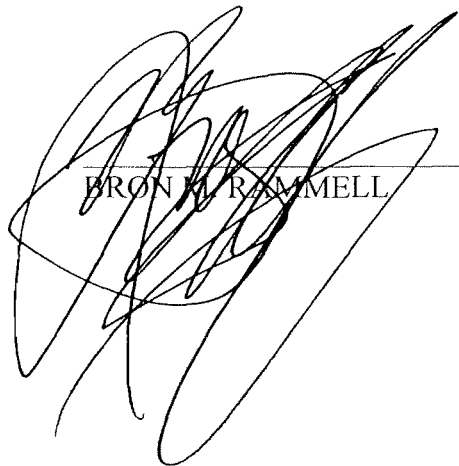
- 766
5. This conviction was largely premised upon a videotape made by Mr. Draper and identified to the press by the State, before the Preliminary Hearing; then played multiple times by the media both during Draper's trial and after his conviction.
  6. In fact, after the conviction, the video was essentially played in its entirety to the public. A DVD containing some of the news programs is attached hereto for illustrative and evidentiary purposes.
  7. This video was played in Twin Falls and Boise, and is the subject of much discussion there.
  8. This same video is a key piece of evidence in this case.
  9. Affiant discovered that the public in both Twin Falls and Boise is intimately familiar with the case through a discussion with Bar Counsel and others. The fact that Torey Adamcik must still appear before a Twin Falls jury, and the contents and nature of the videotape is common knowledge.
  10. Newspaper articles continue to address the Trial and particularly the videotape multiple times each week, and often daily. The case was addressed in USA Today and was picked up by the Associated Press.
  11. A copy of a portion of the articles published in the Twin Falls media are attached, illustrating the fact that Twin Falls media has been following this case and Torey Adamcik has been attributed as making statements inculcating himself.
  12. Speculation of Torey Adamcik's involvement in the Nori Jones case continues although the Court clearly instructed counsel in the Draper case, in the presence of the press, that such issues were not relevant. A copy of a recent article regarding Torey Adamcik's connection to Nori Jones is attached for reference and evidentiary purposes.
  13. The Pretrial Suppression Hearing in this matter seeks to suppress information which the Defendant believes is inadmissible at Trial.
  14. As set forth in the case of *Gannett v. DePasquale*, 443 U.S. 368 (1979),  
"The purpose of pretrial suppression hearings is to prevent unreliable or

illegally obtained evidence from coming before a jury”, and the public has no right of access to that information under the First or Fourteenth Amendments to that information until after trial.

15. At every hearing, television cameras and the press have been present.
16. Their presence is inappropriate at Pretrial Suppression and Evidentiary Hearings because, by their nature they address material that is not reliable and is not evidence.
17. It is likely, that at least some members of the potential jury pool in the Adamcik case will be exposed to inflammatory information not admitted into evidence, and will be prejudicial thereby, making it more difficult if not impossible for Torey Adamcik to obtain a fair and impartial jury in Southern Idaho.
18. Though extensive harm has already been caused to Torey Adamcik as a result of the pretrial publicity, Affiant believes that closing the Pretrial Suppression Hearings in this matter to the public and press can at least prevent additional damage.

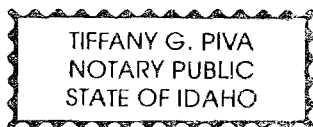
767  
FURTHER AFFIANT SAYETH NAUGHT

DATED this 21 day of April, 2007.

  
BRON R. RAMMELL

SUBSCRIBED AND SWORN to before me, Notary, this 27<sup>th</sup> day of April,  
2007.

(Seal)



*Tiffany G. Piva*  
\_\_\_\_\_  
NOTARY PUBLIC OF IDAHO  
Residing in: Pocatello, Idaho  
Commission Expires: 8/30/2011

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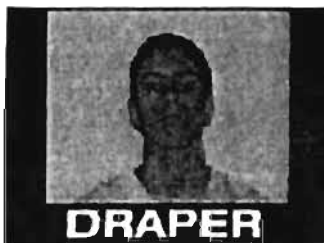
## Idaho News

### Taped murder confession led to teen's conviction

12:11 PM MDT on Thursday, April 19, 2007



By YSABEL BILBAO



Brian Draper, 17, has been convicted of first-degree murder and conspiracy to commit murder.

POCATELLO - It's graphic and disturbing.

Two teenagers talking about killing their classmate.

They had an elaborate plan and police say they carried it out.

After two weeks a jury agreed at least one of the suspects is guilty of murder.

A 17-year-old boy was convicted of murder Tuesday in the stabbing death of a Pocatello High School classmate.

A Sixth District Court jury found Brian Draper guilty of first-degree murder and conspiracy to commit first-degree murder in the slaying of 16-year-old Cassie Jo Stoddart. She was stabbed at least 30 times. Draper faces life in prison.

Jurors deliberated about five hours before returning their verdicts.

Stoddart was killed September 22nd while house-sitting for relatives near Chubbuck. Her body was found two days later when her relatives returned home.

Draper and another teen, Torey Adamcik, were arrested September 27th.

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NewsChannel 7 has received a copy of the homemade confession tape.

Cassie Jo was house sitting for her aunt when some high school classmates came up with a plan and carried out a brutal murder by stabbing her to death.

Brian Draper hung his head as the jury's verdict was read aloud, but his reaction comes as a surprise after a videotape was released during the trial.

The photographer is Draper, and the other person with him is the second suspect, 16-year-old Torey Adamcik.

On the tape you hear the two boys plot the crime, then they come back with reaction after the murder.

It was evidence like this that helped the prosecution get their conviction -- along with four knives the boys bought at a local pawn shop weeks before the attack.

With the first trial done, the victim's family says there is some relief.

"I would just like to thank Mr. Hiedeman, McPherson, all the law officers for the job well done, one more and one more to go, thank you," said Paul Sisneros, Cassie's grandfather.

"We got guilty, that's all we needed, thank you so much," said Anna Stoddart, Cassie's mother.

Judge Peter McDermott did not set a sentencing date, but ordered a presentencing report and psychological evaluation of Draper.

Adamcik is scheduled to go on trial on similar charges next month.

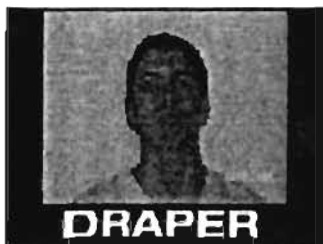
*Associated Press contributed to this report.*

## Idaho News

### Jury hears testimony about teen's fatal stab wounds

01:40 PM MDT on Tuesday, April 17, 2007

Associated Press



Brian Draper is charged with first-degree murder.

POCATELLO -- A pathologist testified that a Pocatello high school student killed last fall was stabbed at least 30 times, describing nearly half of the wounds as potentially fatal.

Dr. Steven Skoumal, a private practice pathologist, took the stand in Bannock County Court on Monday in the second week of the murder trial of Brian Draper.

Draper, 17, is accused of first-degree murder and conspiracy to commit first-degree murder for taking part in the fatal stabbing of classmate Cassie Jo Stoddart. Draper and Torey Adamcik, scheduled to go on trial on similar charges next month, each face life in prison if convicted.

Under questioning by prosecutors, Skoumal described each of the stab wounds found on Stoddart's body, down to the width, depth and potential to be fatal. He classified 14 of the 30 wounds as potentially fatal.

When asked by defense attorneys if he was certain the wounds were caused by knives, Skoumal said: "It was a sharp instrument."

Stoddart was killed Sept. 22 while house-sitting for relatives near Chubbuck. Her body was found two days later when her relatives returned home. Draper and Adamcik were arrested Sept. 27.

Last week, prosecutors showed the jury incriminating videotapes, including a series of police interrogations in which Draper gives mixed accounts of his role in the attack. The jury also watched a 30-minute homemade video that captures Draper and Adamcik discussing plans to kill their classmate and talking about the attack afterward.

"We just killed Cassie. We just left her house," Brian Draper is heard saying on the recording. "This is

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not a joke. It's like it wasn't real. It was so fast."

The defense has yet to lay out its case, but the public defender told the jury in opening statements that Draper did not set out to intentionally kill Stoddart, believing instead he was making a movie with Adamcik, 16.

Testimony Monday also focused on the knives prosecutors say were used in the attack.

Joe Lucero, a friend of Adamcik's family and a former soccer teammate of Draper, testified he bought four knives for the defendants several days after turning 18.

Lucero said Draper and Adamcik wanted the knives for a collection. On the day of the purchase, Lucero said Draper withdrew \$40 from a local bank en route to a Pocatello pawn shop.

"We went to the knife case and they started going through them," Lucero told the jury.

Lucero later identified four knives, which were entered into evidence last week, Draper and Adamcik bought at the pawn shop. The knives were discovered by detectives days after the attack in the Black Rock Canyon along with other evidence prosecutors say the defendants hid at the site.

7.7.2





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### Pocatello teen convicted in fatal stabbing

Wednesday, April 18, 2007 12:59 PM PDT

POCATELLO (AP) — A 17-year-old boy has been convicted of murder in the stabbing death of a high school classmate Tuesday.

A 6th District Court jury found Brian Draper guilty of first-degree murder and conspiracy to commit first-degree murder in the slaying of 16-year-old Cassie Jo Stoddart. She was stabbed at least 30 times.

Draper faces life in prison. Judge Peter D. McDermott did not set a sentencing date, but ordered a presentencing report and psychological evaluation of Draper.

Jurors deliberated about five hours before returning their verdicts at 9:25 p.m. Tuesday.

Stoddart was killed Sept. 22 while house-sitting for relatives near Chubbuck. Her body was found two days later when her relatives returned home.

#### ADVERTISEMENT



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During Draper's trial, prosecutors showed the jury incriminating videotapes, including a series of police interrogations in which Draper gave varying accounts of his actions.

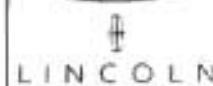
The jury also watched a 30-minute homemade video that showed Draper and Adamcik discussing plans to kill their

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classmate and talking about the attack afterward.

"We just killed Cassie. We just left her house," Draper is heard saying on the recording. "This is not a joke. It's like it wasn't real. It was so fast."

A pathologist testified that Stoddart was stabbed at least 30 times, with nearly half of the wounds being potentially fatal.

Draper's attorney, Bannock County Public Defender Randy Schulthies, called only one witness. A San Diego pathologist, Dr. Harry Bonnell, partly confirmed testimony from two pathologists called by prosecutors.

But he said he did not believe a conclusion that a knife was used to inflict the wounds on Stoddart could be drawn based on the autopsy photos or report.

Joe Lucero, a friend of Adamcik's family and a former soccer teammate of Draper, had testified he bought four knives for the defendants several days after turning 18.

Lucero said Draper and Adamcik wanted the knives for a collection. On the day of the purchase, Lucero said Draper withdrew \$40 from a local bank en route to a Pocatello pawn shop.

"We went to the knife case and they started going through them," Lucero told the jury.

Lucero later identified four knives, which were entered into evidence last week, that he said Draper and Adamcik selected at the pawn shop. The knives were discovered by detectives days after the attack in the Black Rock Canyon along with other evidence prosecutors say the defendants hid at the site.

Cynthia Hall, a forensic scientist for Idaho State Police, testified that Stoddart's blood was found on one knife, one glove and one shirt taken from the Black Rock Canyon area.

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Bron M. Rammell, Esq.  
Aaron N. Thompson, Esq.  
DIAL, MAY & RAMMELL, CHARTERED  
216 W. Whitman/P.O. Box 370  
Pocatello, Idaho 83204-0370  
Phone: (208) 233-0132 Fax: (208) 234-2961  
Idaho State Bar No. 4389  
Idaho State Bar No. 6235

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,	CASE NO. CR-2006-17984-FE-AA
Plaintiff,	
vs.	<b>MEMORANDUM IN SUPPORT OF MOTION TO CLOSE PRETRIAL SUPPRESSION AND EVIDENTIARY HEARINGS TO THE PUBLIC AND PRESS</b>
TOREY ADAMCIK,	
Defendant.	

COMES NOW Defendant Torey Adamcik, through counsel, submits the following Memorandum in Support of Defendant's Motion to exclude the public and press from the Pretrial Suppression and Evidentiary Hearings scheduled for May 2, 2007 and thereafter.

**I. ARGUMENT**

The First and Fourteenth Amendments do not authorize the public or press to be present at a pretrial hearing on a motion to suppress. *Gannett v. DePasquale*, 443 U.S. 368 (1979). "Publicity concerning pretrial suppression hearings poses special risks of unfairness. . . ." *Id.* at 369.

776

Because a trial judge has "an affirmative constitutional duty to minimize the effects of prejudicial pretrial publicity. . ." hearings on evidentiary matters, especially suppression issues, require limited exposure. *Id.*

The State may claim that the public has a right to the information pursuant to *Nebraska Press v. Stuart*, 427 U.S. 539 (1976). *Gannett* was decided after *Nebraska Press*, however. As explained in *Gannett*, "once the danger of [any] prejudice is dissipated, a transcript of the suppression hearing..." may be made available. The defendant alone is entitled the Sixth Amendment's guarantee of a public trial. *Id.*

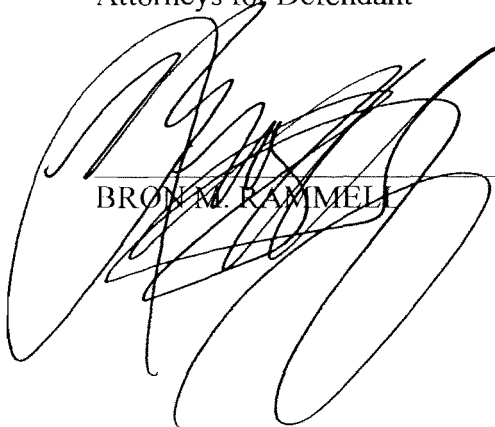
Defendant believes that no good can come from allowing public attendance at the Pretrial Suppression and Evidentiary Hearings currently scheduled for May 2, 2007 and thereafter.

## II. CONCLUSION

Based upon current and longstanding law handed down by the United States Supreme Court, the public and press should be excluded from the Pretrial Suppression and Evidentiary Hearings of May 2, 2007 and thereafter.

DATED this 27 day of April, 2007.

DIAL, MAY & RAMMELL, CHARTERED  
Attorneys for Defendant

  
BROWN M. RAMMELL

777

CERTIFICATE OF SERVICE

I certify that on this date a copy of the *Memorandum in Support of Motion to Close Pretrial Suppression Hearing to the Public and Press* was served on the following named personal at the addresses shown and in the manner indicated.

Bannock County Prosecutor  
P.O. Box P  
Pocatello, ID 83205-0050

[ ☒ ] U.S. Mail  
[ ☐ ] Hand Delivery  
[ ☐ ] Facsimile

DATED this 27 day of April, 2007.

178



DAVID M. & RAMMELL, CHTD.

7-78

2007 MAY -1 PM 3:47

779

MARK L. HIEDEMAN  
BANNOCK COUNTY PROSECUTOR  
P.O. BOX P  
POCATELLO, ID 83205-0050  
(208) 236-7280

BANNOCK COUNTY  
CLERK OF DISTRICT COURT  
MAY -1 PM 3:47  
Ks


**VIC A. PEARSON ISB #6429**  
Chief Deputy Prosecuting Attorney

780  
IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,	)	
	)	CASE NO. CR-06-17984-FE-C
Plaintiff,	)	
	)	<b>SECOND</b>
vs.	)	<b>MOTION IN LIMINE</b>
	)	
TOREY MICHAEL. ADAMCIK,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW the State of Idaho, by and through MARK L. HIEDEMAN,  
Prosecuting Attorney, in and for the County of Bannock, State of Idaho, and moves the  
Court for an Order allowing both Det. Toni Vollmer and Det. Andy Thomas to sit at  
counsel table during the jury trial in this matter.

DATED this 15<sup>th</sup> day of May, 2007.

  
\_\_\_\_\_  
MARK L. HIEDEMAN  
Prosecuting Attorney



MARK L. HIEDEMAN  
BANNOCK COUNTY PROSECUTOR  
P.O. BOX P  
POCATELLO, ID 83205-0050  
(208) 236-7280

**VIC A. PEARSON ISB #6429**  
Chief Deputy Prosecuting Attorney

CLERK OF DISTRICT COURT  
BANNOCK COUNTY, IDAHO  
2007 MAY -1 PM 3:47  
Ks

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,

Plaintiff,

vs.

TOREY MICHAEL. ADAMCIK,

Defendant.

CASE NO. CR-06-17984-FE-C

**THIRD**  
**MOTION IN LIMINE**

COMES NOW the State of Idaho, by and through MARK L. HIEDEMAN, Prosecuting Attorney, in and for the County of Bannock, State of Idaho, and moves the Court for an Order allowing the State to play the copy of the "Homemade" video at trial rather than the original video due to the fact of decomposition upon repeated playing of the original.

DATED this 1<sup>st</sup> day of May, 2007.

  
MARK L. HIEDEMAN  
Prosecuting Attorney

MARK L. HIEDEMAN  
BANNOCK COUNTY PROSECUTOR  
P.O. BOX P  
POCATELLO, ID 83205-0050  
(208) 236-7280

**VIC A. PEARSON ISB #6429**  
Chief Deputy Prosecuting Attorney

2007 MAY 11 PM 3:47  
Kg

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK


782

STATE OF IDAHO,	)	
	)	CASE NO. CR-06-17984-FE-C
Plaintiff,	)	
	)	
vs.	)	<b>FOURTH</b>
	)	<b>MOTION IN LIMINE</b>
	)	
TOREY MICHAEL. ADAMCIK,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW the State of Idaho, by and through MARK L. HIEDEMAN, Prosecuting Attorney, in and for the County of Bannock, State of Idaho, and moves the Court for an Order allowing the Jury empanelled at this trial to travel to 11372 Whispering Cliffs, Bannock County; and to travel to the location in Blackrock Canyon where some of the evidence was discovered.

This motion is based on the grounds and for the reason that jury needs to view the crime scenes in person during the trial in this matter.

DATED this 1<sup>st</sup> day of May, 2007.

  
\_\_\_\_\_  
MARK L. HIEDEMAN  
Prosecuting Attorney

782

2007 MAY -2 PM 5:31  
Kg

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
IN AND FOR THE STATE OF IDAHO, COUNTY OF BANNOCK

STATE OF IDAHO, )  
 )  
 Plaintiff, ) CASE NO. CR2006-17984FE-AA  
 )  
 vs. ) MINUTE ENTRY AND ORDER  
 )  
 TOREY MICHAEL ADAMCIK, )  
 )  
 06-14-1990 )  
 )  
 Defendant. )

Defendant appeared this 2<sup>nd</sup> day of May, 2007, with counsel Bron Rammell and Aaron Thompson. Mark L. Hiedeman, Bannock County Prosecuting Attorney, and Vic A. Pearson, Chief Deputy Prosecuting Attorney, appeared on behalf of the State.

In chambers, Defendant present with counsel, Bron Rammell and Aaron Thompson, Mark L. Hiedeman and Vic A. Pearson present on behalf of the State. Bannock County Sheriff Lorin Nielsen was also present. The Court received oral argument regarding the State's Motion to Reconsider the Court's Order regarding visitation with parents.

NOW, THEREFORE, IT IS HEREWITH ORDERED the State's Motion to Reconsider this Court's previous order regarding visitation with Defendant, his counsel, and parents to prepare for trial in this matter is GRANTED. A stipulation regarding visitations will be provided to the Court with specific times and dates indicating 1 hour

per week during the week of May 7, 14, and 21 and the week of May 21<sup>st</sup> a 3 to 4 hour visit will be allowed.

Court convened with Defendant, counsel Bron Rammell and Aaron Thompson present. Mark L. Hiedeman and Vic A. Pearson appeared on behalf of the State of Idaho.

The Court received oral argument of respective counsel regarding Defendant's Motion to Close this Hearing to the Public and Press.

IT IS FURTHER ORDERED Defendant's Motion to Close this Hearing to the Public and press is DENIED.

784  
The Court received oral argument of respective counsel regarding Defendant's Motion to Suppress Videotape and Other Illegally Obtained Evidence.

Defendant called Detective Alex Hamilton, Bannock County Sheriff's Department, who was sworn and testified.

IT IS FURTHER ORDERED Defendant's Motion to Suppress Videotape and Other Illegally Obtained Evidence is DENIED and a written decision to follow.

The Court received oral argument regarding Defendant's Motion to Suppress Videotape of Draper or Parts Thereof.

State called Detective Scott Marchand, Pocatello Police Department, who was sworn and testified.

Witness excused.

State called Lt. John Ganske, Criminal Investigator for Idaho State Police, who was sworn and testified.

Witness identified the Defendant.

State's Exhibit #1, Your Rights Statement dated 9/27/06 used by Idaho State

Police, signed by Torey Adamcik witnessed by Lt. Ganske and Det. Andy Thomas was marked for identification purposes and same was admitted into evidence.

Witness excused.

State called Detective Andy Thomas, Bannock County Sheriff's Office, who was sworn and testified.

State's Exhibit #2, copy of a statement written and signed by Torey Adamcik dated 9/2/42006, was marked for identification purposes and same was admitted into evidence.

State's Exhibit #3, two cd's of Adamcik interviews marked 1 of 2 and 2 of 2, were marked for identification purposes and same were admitted into evidence.

Court recessed for Noon and reconvened at 1:18 P.M., the Court noting Defendant, Defendant's counsel and State's counsel present.

Detective Andy Thomas was recalled, admonished he is still under oath and continued testimony.

Witness excused.

Oral argument regarding CD's of Defendant Adamcik's interview.

Defendant's counsel moved for suppression of CD's of Defendant Adamcik's interviews was TAKEN UNDER ADVISEMENT.

Defendant called Defendant's father Sean Adamcik, who was sworn and testified.

Witness excused.

Defendant call Defendant's mother Shannon Adamcik, who was sworn and testified.

Witness excused.

786  
Court recessed and reconvened with the Court noting Defendant, Defendant's counsel and State's counsel present.

Defendant called Gregory DeClue, Ph.D., Forensic Psychologist, who was sworn and testified.

State's Exhibit #4, writing and drawings of Defendant Adamcik, was marked for identification purposes and same was not admitted into evidence and returned to the State.

Witness excused.

Defense rested.

State recalled Gregory DeClue, Ph.D., who was admonished he is still under oath, and testified.

Witness excused.

The Court received oral argument of respective counsel.

IT IS HEREWITH ORDERED Defendant's Motion to Suppress interview CD is TAKEN UNDER ADVISEMENT.

IT IS SO ORDERED.

DATED this 2<sup>nd</sup> day of May, 2007.

  
PETER D. McDERMOTT  
District Judge

Copies to:  
Mark L. Hiedeman/Vic A. Pearson  
Aaron Thompson/Bron Rammell

## IDAHO STATE POLICE

## YOUR RIGHTS

PLACE: Pocatello Police DeptDATE: 9-27-2006

CASE#: \_\_\_\_\_

TIME: 7:05 PM

Before you are asked any questions, you must understand your rights. You have the right to remain silent; however, anything which you do say can be used against you in court. You have the right to talk to a lawyer for advice before you are asked any questions and to have him with you during questioning. You have this right to the advice and presence of a lawyer even if you cannot afford to hire one and if you are unable to hire a lawyer, one will be appointed for you. If you wish to answer questions or make any statement at this time without a lawyer being present, you have the right to refuse to answer any questions and to have this interview terminated at any time.

787 Ud. tiene el derecho de quedarse callado. Cualquier cosa que diga puede emplearse y se empleara en contra de Ud. en el juzgado. Ud. tiene el derecho de hablar con un abogado y de pedirle que esté presente mientras lo interrogan a Ud. Si Ud. no puede pagar a un abogado, se nombrará uno para representarlo antes de que lo interroguen, si lo desea Ud. Ud. puede decidir cuando quiera ejercer estos derechos y no contestar ningunas preguntas ni hacer ningunas declaraciones.

## WAIVER

I have read the statement of my rights as shown above and understand what my rights are. I desire to answer questions and make a statement without first consulting with an attorney and without having a lawyer present at this time. This decision is voluntary on my part and no promises, threats or force of any nature have been made or used to or against me.

¿Entiende Ud. cada uno de estos derechos que le he explicado? Teniendo en cuenta estos derechos, ¿quiere Ud. hablar con nosotros ahora?

SIGNED/FIRMA: X Tony AdamsWITNESS/TESTIGOS: [Signature]WITNESS/TESTIGOS: [Signature]TIME/HORA: 7:07 PM

ADMITTED IN EVIDENCE

Guten D. 9/27/06

St as Adams

On Friday Cassie was planning to have some people over, I picked up Brian + we went to Cassie's house she was watching. We got there at about 8:00 to 8:30. We left at about 9:15 to about 9:45. We went to the theater about 9:50, Me + Brian got out about 11:30 through 11:45. We went to my house + watched a movie + went to sleep.

9/24/06

Tony  
Adancik

788

ADMITTED IN EVIDENCE

Peter D. McQuinn

DISTRICT JUDGE

5-2-07



789

## Gregory DeClue, Ph.D.

*Diplomate in Forensic Psychology, American Board of Professional Psychology*

---

16443 Winburn Place  
Sarasota, FL 34240-9228  
Voice/Fax (941) 951-6674  
gregdeclue@mailmt.com

Florida Psychology License Number PY0003427  
Certified Sex Therapist  
<http://gregdeclue.myakkatech.com>

### EDUCATION

Ph.D. Psychology, University of Missouri, 1983. Fully approved by the American Psychological Association.

### CONSULTANT/PROVIDER FOR

Sarasota (County) Sheriff's Office  
Sarasota (City) Police Department  
Manatee County Sheriff's Office  
Town of Longboat Key Police Department  
Sarasota-Manatee Airport Authority  
Twelfth Judicial Circuit Court  
Public Defender. Twelfth Judicial Circuit

789 + 68L  
06L + 790

Bron M. Rammell, Esq.  
Aaron N. Thompson, Esq.  
DIAL, MAY & RAMMELL, CHARTERED  
216 W. Whitman/P.O. Box 370  
Pocatello, Idaho 83204-0370  
Phone: (208) 233-0132 Fax: (208) 234-2961  
Idaho State Bar No. 4389  
Idaho State Bar No. 6235

FILED  
JANUARY COUNTY  
CLERK OF THE COURT

2007 MAY -2 AM 9:10

BY KS  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,

Plaintiff,

vs.

TOREY ADAMCIK,

Defendant.

CASE NO. CR-2006-17984-FE-AA

**MOTION IN LIMINE REGARDING  
EXPERT TESTIMONY**

COMES NOW Defendant Torey Adamcik, through counsel, and requests an Order from the Court requiring the State's medical, forensic, and lab experts to lay a complete foundation and specifically identify the standards and basis upon which the data is based pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc*, 509 US 579 (1993), *State v. Grube*, 126 Idaho 377 (1994) Cert. denied 514 U.S. 1098 (1995), and *Idaho Rules of Evidence* 701, 702, and 703. The foundation expected includes whether the conclusion can be tested, whether it is subject to peer review and publication, the rate of error and controlling standards, the general acceptance in the community and other relevant considerations including the methodology used in reaching the conclusion and its relevance (whether the statement is more prejudicial than probative).

This Motion is based on the fact that State experts may "blurt" out opinions or conclusions that are not admissible and are not relevant because they are more prejudicial than probative.

It is anticipated *Daubert* hearings will be required regarding specific testimony, after the Defendant receives the transcripts from the testimony of the Draper trial.

WHEREFORE, Defendant requests that the States expert witnesses be instructed not to give opinions without giving the defense an adequate opportunity to examine the foundation, basis, reliability, and relevance of any such opinions or conclusions.

DATED this 1<sup>st</sup> day of May, 2007.

DIAL, MAY & RAMMELL, CHARTERED

Attorneys for Defendant

BRON M. RAMMELL

CERTIFICATE OF SERVICE

I certify that on this date a copy of the *Motion in Limine Regarding Expert Testimony* was served on the following named personal at the addresses shown and in the manner indicated.

Bannock County Prosecutor  
P.O. Box P  
Pocatello, ID 83205-0050

☐ U.S. Mail  
☐ Hand Delivery  
☒ Facsimile

DATED this 1 day of May, 2007.

DIAL, MAY & RAMMELL, CHTD.

ORIGINAL

2007 APR 26 PM 3:36

Bron M. Rammell, Esq.  
Aaron N. Thompson, Esq.  
DIAL, MAY & RAMMELL, CHARTERED  
216 W. Whitman/P.O. Box 370  
Pocatello, Idaho 83204-0370  
Phone: (208) 233-0132 Fax: (208) 234-2961  
Idaho State Bar No. 4389  
Idaho State Bar No. 6235

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

793  
STATE OF IDAHO,

Plaintiff,

vs.

TOREY ADAMCIK,

Defendant.

CASE NO. CR-2006-17984-FE-AA

**DEFENDANTS SECOND AMENDED  
JURY QUESTIONNAIRE**

Defendant Torey Adamcik, by and through his counsel of record, Bron M. Rammell, of the firm Dial, May & Rammell, Chtd., hereby respectfully submits this Defendants Amended Jury Questionnaire attached hereto:

DATED this 26<sup>th</sup> day of April, 2007.

DIAL, MAY & RAMMELL, CHTD.  
*Attorneys for Defendant*

793  
BRON M. RAMMELL

CERTIFICATE OF SERVICE


I certify that on this date a copy of the *Defendants Second Amended Jury Questionnaire* was served on the following named persons at the addresses shown and in the manner indicated.

Bannock County Prosecutor  
P.O. Box P  
Pocatello, ID 83205-0050

[ ] Facsimile  
[ ☒ ] Hand Delivered  
[ ] U.S. Mail

DATED this 26<sup>th</sup> day of April, 2007.

794



DIAL, MAY R. RAMMELL, CHTD.

FILED  
BANNOCK COUNTY CLERK  
CLERK OF THE COURT

ORIGINAL

2007 MAY -4 AM 9:58

KG  
CLERK OF THE COURT

Bron M. Rammell, Esq.  
Aaron N. Thompson, Esq.  
DIAL, MAY & RAMMELL, CHARTERED  
216 W. Whitman/P.O. Box 370  
Pocatello, Idaho 83204-0370  
Phone: (208) 233-0132 Fax: (208) 234-2961  
Idaho State Bar No. 4389  
Idaho State Bar No. 6235

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT  
STATE OF IDAHO IN, AND FOR COUNTY OF BANNOCK

STATE OF IDAHO,

Plaintiff,

795  
vs.

TOREY ADAMCIK,

Defendant.

CASE NO. CR-2006-17984-FE-AA

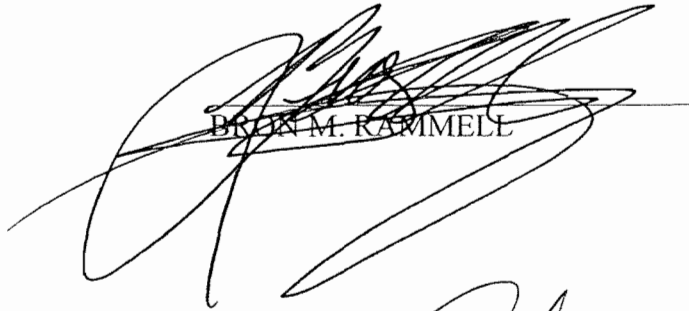
**STIPULATION REGARDING  
TRANSPORT OF TOREY ADAMCIK TO  
DIAL, MAY & RAMMELL, CHTD.**

Based upon the argument of counsel and the Court's decision of May 2, 2007, the Parties stipulate as follows:

1. The Bannock County Sheriff's Office shall transport Torey Adamcik to the law offices of Dial, May & Rammell, Chtd., 216 W. Whitman, Pocatello, Idaho, one time per week, the week on May 7<sup>th</sup>, May 14<sup>th</sup>, and May 21<sup>st</sup>, 2007.
2. The weeks of May 7<sup>th</sup> and 14<sup>th</sup>, the visitation will be approximately one hour. At the request of the Bannock County Sheriff's Office, these visits will take place on Friday, May 11<sup>th</sup> and Friday, May 18<sup>th</sup>, 2007 beginning at 9:00 a.m. at said law offices each day.
3. For the week of May 21<sup>st</sup>, the visit allowed will be approximately 3-4 hours, and to be at a specific time to be arranged either on May 23<sup>rd</sup> or May 24<sup>th</sup>. If a specific time cannot be mutually agreed upon, the time of the visit will be Thursday, May 24<sup>th</sup>, beginning at 9:00 a.m.

4. The Bannock County Sheriff's Office and the law offices of Dial, May & Rammell may change the times of the visits by mutual agreement. However, if a mutual agreement cannot be reached, then the specific times and dates above will apply.

5-3-07  
DATE

  
BRIAN M. RAMMELL

5-3-07  
DATE

  
MARK. L. HIEDEMAN

796

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2007 MAY -4 AM 9:58

Ks

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT  
STATE OF IDAHO IN, AND FOR COUNTY OF BANNOCK

STATE OF IDAHO,

Plaintiff,

vs.

TOREY ADAMCIK,

Defendant.

CASE NO. CR-2006-17984-FE-AA

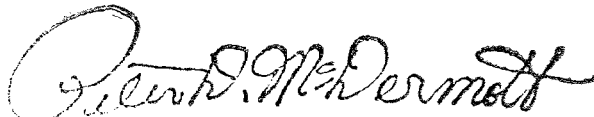
**ORDER TO TRANSPORT TOREY  
ADAMCIK TO DIAL, MAY &  
RAMMELL, CHTD.**

Based upon the Stipulation of the Parties and prior ruling of the Court,  
IT IS HEREBY ORDERED:

- 797
1. The Bannock County Sheriff's Office will transport Torey Adamcik to the law offices of Dial, May & Rammell, Chtd., 216 W. Whitman, Pocatello, Idaho, one time per week, the week on May 7<sup>th</sup>, May 14<sup>th</sup>, and May 21<sup>st</sup>, 2007.
  2. The weeks of May 7<sup>th</sup> and 14<sup>th</sup>, the visitation will be approximately one hour. At the request of the Bannock County Sheriff's Office, these visits will take place on Friday, May 11<sup>th</sup> and Friday, May 18<sup>th</sup>, 2007 beginning at 9:00 a.m. at said law offices each day.
  3. For the week of May 21<sup>st</sup>, the visit allowed will be approximately 3-4 hours, and to be at a specific time to be arranged either on May 23<sup>rd</sup> or May 24<sup>th</sup>. If a specific time cannot be mutually agreed upon, the time of the visit will be Thursday, May 24<sup>th</sup>, beginning at 9:00 a.m.
  4. The Bannock County Sheriff's Office and the law offices of Dial, May & Rammell may change the times of the visits by mutual agreement. However, if a mutual agreement cannot be reached, then the specific times and dates above will apply.



IT IS SO ORDERED this 4<sup>th</sup> day of May, 2007.



HONORABLE PETER D. MCDERMOTT

CERTIFICATE OF SERVICE

798  
I certify that on this date a copy of the *Order Regarding Transport of Torey Adamcik to Dial, May & Rammell, Chtd.* was served on the following named personal at the addresses shown and in the manner indicated.

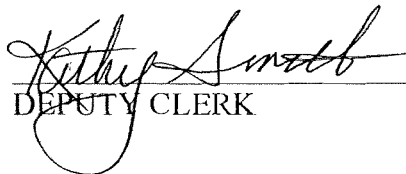
Bannock County Prosecutor  
P.O. Box P  
Pocatello, ID 83205-0050

*Bron Rammell*

DATED this 4<sup>th</sup> day of May, 2007.

[ ] U.S. Mail  
[ ☒ ] Hand Delivery  
[ ] Facsimile

*✓ U.S. mail*

  
DEPUTY CLERK

798

STATE OF IDAHO,  
  
Plaintiff,  
  
vs.  
  
TOREY ADAMCIK  
  
Defendant.

## ORDER

However, it has also been established by the Supreme Court that a Fourth Amendment violation can be successfully urged only by those whose rights were violated by the search itself, not by those who are aggrieved solely by the introduction of damaging evidence. *Alderman v. U.S.*, 394 U.S. 165, 172 89 S.Ct. 961, 968 (1969). “Co-conspirators and codefendants have been accorded no special standing.” *Id.*

In *Wong Sun v. U.S.*, 371 U.S. 471, 83 S.Ct. 407 (1963), two defendants were tried together and narcotics seized from a third party were held inadmissible against one defendant because they were the product of statements made by him at the time of his unlawful arrest. But the same narcotics were found to be admissible against the codefendant because “(t)he seizure of this heroin invaded no right of privacy of person or premises which would entitle (him) to object to its use at his trial.” *Id.* Similarly, “a person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed.” *Rakas v. Illinois*, 439 U.S. 128, 99 S.Ct. 421 (1978).

*Jones v. U.S.*, 362 U.S. 257, 261, 80 S.Ct. 725, 731, 4 L.Ed.2d 697 (1960), further articulates the rule:

In order to qualify as a “person aggrieved by an unlawful search and seizure” one must have been a victim of a search or seizure, one against whom the search was directed, as distinguished from one who claims prejudice only through the use of evidence gathered as a consequence of a search or seizure directed at someone else.

Simply put, Fourth Amendment rights are personal rights that may not be vicariously asserted. *Alderman v. U.S.*, 394 U.S. 165, 172 89 S.Ct. 961, 968 (1969).

In the present case, Defendant Adamcik was not the supposed victim of an unlawful search and seizure with respect to the homemade videotape. In fact, Defendant Draper was not even the victim of an unlawful search and seizure. Draper knowingly, voluntarily, and willingly led law enforcement to the Blackrock area where the videotape was seized. Draper gave law enforcement his direct consent. Furthermore, the videotape was discovered in an area open to the public and not on private property. The information that led to the discovery of the videotape did not come from Defendant Adamcik, his attorneys or his parents.

As the Supreme Court in *Alderman* noted, no rights of the victim, which presumably would be Brian Draper, of an illegal search are at stake when the evidence would potentially be offered against Torey Adamcik. Brian Draper objected to the admission of the videotape himself when it became important for him to do so at trial, and the Court allowed for its admission. Accordingly, even if the search for the videotape was found to be illegal, which the Court determined it was not, Adamcik could still not vicariously assert his Fourth Amendment Rights against an illegal search and seizure.

Adamcik also asserts that the homemade video and “other illegally obtained evidence” should be suppressed pursuant to Adamcik’s Fifth Amendment right against self-incrimination.<sup>1</sup> This argument has no merit. The Self-Incrimination Clause of the Fifth Amendment reads: “No person ... shall be compelled in any criminal case to be a witness against himself.” U.S. CONST. amend. V. Generally, the privilege attaches either when a person is legally compelled to testify, e.g., subpoena or a court order, or during a “custodial interrogation,” where the compulsion comes from the custodial environment. *See, e.g., Miranda v. Ariz.*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966); *U.S. v. Howard*, 991 F.2d 195, 200 (5th Cir.1993) (“The defendant’s Fifth Amendment right against self-incrimination does not attach until custodial interrogation has begun”). The Supreme Court has also explained that the privilege protects a person only against being incriminated by his own compelled testimonial communications. *See Doe v. U.S.*, 487 U.S. 201, 207, 108 S.Ct. 2341, 2345 (1988). Adamcik, at the time the incriminating statements on the homemade video were made was not under a court order, or a subpoena, or any other compulsion to make such statements, much less record them or compelled to allow Defendant Draper to

---

<sup>1</sup> Defendant Adamcik did not articulate what precisely is the “other illegally obtained evidence.” Consequently, it is difficult to ascertain the exact items of evidence Adamcik seeks to suppress. However, given the Court’s knowledge of the evidence obtained in the Blackrock area that was presented in *State v. Draper*, Adamcik is presumably referring to the knives, masks, clothes, matches, and notebook paper obtained therefrom. For purposes of this Motion, such evidence may be grouped in with the homemade videotape.

ORDER

Re: Adamcik’s Motion to Suppress Videotape  
Case No. CR-2006-17984-FE-AA

881

record them. Moreover, it is also clear that Adamcik was not under "custody" when he participated in the videotape. Adamcik voluntarily, knowingly and willingly participated in the making of such video.

Adamcik asserts that the homemade videotape and other illegally obtained evidence should be suppressed because admitting such evidence would violate his Sixth Amendment right to counsel. The Supreme Court of Idaho and the United States Supreme Court have been clear on when the Sixth Amendment right to counsel attaches. The Sixth Amendment guarantees a criminal defendant the right to counsel during all "critical stages" of the adversarial proceedings against him. *U.S. v. Wade*, 388 U.S. 218, 224, 87 S.Ct. 1926, 1931, 18 L.Ed.2d 1149, 1156 (1967); *State v. Ruth*, 102 Idaho 638, 637 P.2d 415 (1981); *Estrada v. State*, 143 Idaho 558, 149 P.3d 833 (2006). It would be incongruous to hold that Adamcik had a constitutional right to counsel before engaging in the production of the homemade video.

Based on the foregoing, the Defendant's Motion to Suppress a Videotape and Other Illegally Obtained Evidence is DENIED.

**IT IS SO ORDERED.**

DATED this 3<sup>rd</sup> day of May 2007.

  
PETER D. MCDERMOTT  
DISTRICT JUDGE

**Copies to:**

Bron Rammell, Aaron Thompson  
Mark Hiedeman, Vic Pearson

ORDER

Re: Adamcik's Motion to Suppress Videotape  
Case No. CR-2006-17984-FE-AA

802

ORIGINAL

2007 MAY -9 PM 1:09

Bron M. Rammell, Esq.  
Aaron N. Thompson, Esq.  
DIAL, MAY & RAMMELL, CHARTERED  
216 W. Whitman/P.O. Box 370  
Pocatello, Idaho 83204-0370  
Phone: (208) 233-0132 Fax: (208) 234-2961  
Idaho State Bar No. 4389  
Idaho State Bar No. 6235

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,

Plaintiff,

vs.

TOREY ADAMCIK,

Defendant.

CASE NO. CR-2006-17984-FE-AA

**DEFENDANTS OBJECTION TO  
PLAINTIFFS FOURTH MOTION IN  
LIMINE**

On or about May 1, 2007, Plaintiff, State of Idaho, filed its *Fourth Motion in Limine* which requests the empanelled jury travel to the various crime scenes. Defendant Torey Adamcik objects to this on the following grounds:

The controlling statute in this matter is *Idaho Code § 19-2124*. This statute states:

*When, in the opinion of the Court, it is proper that the jury should view the place in which the offense is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of the sheriff, to the place, which must be shown to them by a person appointed by the Court for that purpose; and the sheriff must be sworn to suffer no person to speak or communicate with the jury, nor to do so himself, on any subject connected with the trial, and to return them into Court without unnecessary delay, or at a specified time.*

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Here, the State desires to take the empanelled jury to two different locations:

One, The Whispering Cliffs residence where Ms. Stoddart's body was found; and

Two, The Blackrock Canyon area, which is the location in which buried evidence was recovered.

In interpreting this statute, the Idaho Supreme Court has attributed an "abuse of discretion" standard. *State vs. Meyers*, 94 Idaho 570, 572, 494 P.2d 574, 576 (1972).

40 4  
1. Whispering Cliffs Residence. First, the Whispering Cliffs address residence is not in the same condition as when the murder allegedly occurred. Presumably, shortly after the crime scene was examined, the owners of the residence were allowed to move back in. The presumption also follows that the particular areas that are relevant to the jury's analysis have changed, via cleaning, rearranging of furniture, etc. Denial of observation by the jury at the crime scene has been sustained on appeal in *State v. Kleier*, 69 Idaho 491, 495, 210 P.2d 388, 391 (1949). In *Kleier*, the Defendant applied to have the jury review the alleged crime scene. The Court, upon hearing evidence, held that the physical condition of the crime scene had changed, and thereby denied the application *id*.

Secondly, the State has provided voluminous quantities of photographs of the Whispering Cliffs address, which include crime scene photographs, "after" pictures, and videotaping of the entire residence. The State can introduce these photographs in lieu of incurring the costs and expense associated with transporting the entire empanelled jury to the Whispering Cliffs address. With the photographs, the State can present a sufficient rendition of the crime scene without this necessity. Furthermore, such action is cumulative.

For these reasons, Plaintiff's Motion in Limine regarding having the jury visit the Whispering Cliffs address must be denied.

2. Blackrock Canyon area. The State wishes to transport the empanelled jury to the Blackrock Canyon area, likely the specific location where Brian Draper led them in the remote Blackrock Canyon area.

As argued above, the State has provided, through discovery, numerous photographs of the Blackrock Canyon area. These photographs include, but are not limited to, aerial photos, numerous photographs of different vantage points of the Blackrock Canyon area, photographs of the evidence that was retrieved physically from the area, and the evidence


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itself. Transporting the jury to the Blackrock Canyon area, and incurring the expense and safety issues associated therewith is cumulative.

Furthermore, it has been approximately 7 ½ months since the recovery of said evidence. It is highly likely that the physical condition of this scene has changed, perhaps significantly, over this period of time.

For the above reasons, Mr. Adamcik objects to the States Fourth Motion in Limine.

DATED this 7<sup>th</sup> day of May, 2007.

DIAL, MAY & RAMMELL, CHARTERED  
Attorneys for Defendant

  
AARON N. THOMPSON

805



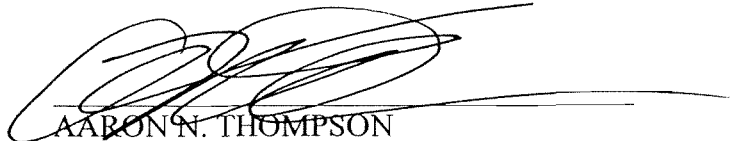
CERTIFICATE OF SERVICE

I certify that on this date a copy of the Defendants Objection to Plaintiffs Fourth Motion in Limine was served on the following named personal at the addresses shown and in the manner indicated.

Bannock County Prosecutor  
P.O. Box P  
Pocatello, ID 83205-0050

☒ U.S. Mail  
☐ Hand Delivery  
☐ Facsimile

DATED this 7<sup>th</sup> day of May, 2007.

  
AARON N. THOMPSON

806

Bron M. Rammell, Esq.  
Aaron N. Thompson, Esq.  
DIAL, MAY & RAMMELL, CHARTERED  
216 W. Whitman/P.O. Box 370  
Pocatello, Idaho 83204-0370  
Phone: (208) 233-0132 Fax: (208) 234-2961  
Idaho State Bar No. 4389  
Idaho State Bar No. 6235

2007 MAY -9 PM 1:09

ORIGINAL

BY KS  
JUL 11 2007

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,

Plaintiff,

807  
vs.

TOREY ADAMCIK,

Defendant.

CASE NO. CR-2006-17984-FE-AA

**MOTION IN LIMINE RE: CLOTHING,  
AUTOPSY PHOTOGRAPHS,  
PHOTOGRAPHS OF BODY, AND  
OTHER INFLAMMATORY EVIDENCE**

Defendant Torey Adamcik, by and through his counsel of record, Aaron N. Thompson of the firm Dial, May & Rammell, Chrt. hereby moves this Court for an Order limiting the introduction of highly prejudicial evidence against him at trial in this matter.

Mr. Adamcik seeks this relief pursuant to Idaho Rule of Evidence, Rule 403, which states, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

Defendant Torey Adamcik maintains that although introduction of Ms. Stoddart's clothes, pictures of her autopsy, and pictures of the body/crime scene may be relevant and therefore probative, its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or is likely to mislead the jury.

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Further, introduction of the evidence infringes upon Mr. Adamcik's right to confront, pursuant to the 6<sup>th</sup> Amendment and the 14<sup>th</sup> Amendment of the United States Constitution.

Mr. Adamcik intends to provide a Memorandum in Support of this Motion in Limine to aid the Court in the above-referenced issue.

DATED this 7<sup>th</sup> day of May, 2007.

DIAL, MAY & RAMMELL, CHARTERED  
Attorneys for Defendant



AARON N. THOMPSON

CERTIFICATE OF SERVICE

I certify that on this date a copy of the *Motion In Limine regarding Clothing, Autopsy Photographs, Photographs of Body, and Other Inflammatory Evidence* was served on the following named personal at the addresses shown and in the manner indicated.

Bannock County Prosecutor  
P.O. Box P  
Pocatello, ID 83205-0050

☒ U.S. Mail  
☐ Hand Delivery  
☐ Facsimile

DATED this 7<sup>th</sup> day of May, 2007.



DIAL, MAY & RAMMELL, CHTD.

808

Bron M. Rammell, Esq.  
Aaron N. Thompson, Esq.  
DIAL, MAY & RAMMELL, CHARTERED  
216 W. Whitman/P.O. Box 370  
Pocatello, Idaho 83204-0370  
Phone: (208) 233-0132 Fax: (208) 234-2961  
Idaho State Bar No. 4389  
Idaho State Bar No. 6235

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,

Plaintiff,

vs.

TOREY ADAMCIK,

Defendant.

CASE NO. CR-2006-17984-FE-AA

**MEMORANDUM IN SUPPORT OF  
MOTION IN LIMINE RE: CLOTHING,  
AUTOPSY PHOTOGRAPHS,  
PHOTOGRAPHS OF BODY, AND  
OTHER INFLAMMATORY EVIDENCE**

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The State will likely introduce similar evidence as was introduced at the case of *State v. Brian Lee Draper* in this case. This evidence includes photographs of Ms. Stoddart's body, photographs from the autopsy, and articles of clothing Ms. Stoddart was wearing at the time of her death. Defendant Torey Adamcik seeks an Order in Limine denying admission of the above referenced items based upon the arguments supplied in this brief.

1. *This evidence is more prejudicial than probative.* Idaho Rule of Evidence Rule 403 invokes a balancing test that a Court must undergo to determine the admissibility of relevant, but potentially highly prejudicial evidence. This analysis is subject to "abuse of discretion" review. *State v. Page*, 135 Idaho 214, 16 P3d 890 (2000).

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a. Does this evidence tend to prove who committed the crime?

The first inquiry that the Court must make is: Is the evidence presented relevant? The evidence being presented here is relevant in that the photographs of Ms. Stoddart's body, along with the clothing that she was wearing, were "involved" in the crime. However, what does this evidence tend to prove? Cassie Stoddart is admittedly deceased. Ms. Stoddart did not die of natural causes. The photographs and clothing do not prove who committed the crime. The evidence is only tangentially relevant by virtue that it was found associated with this crime. It proves very little.

810 The State will respond by arguing that the evidence shows the atrociousness of the act, and tends to show premeditation. This is a red herring. This does not have anything to do with premeditation. What was done to Cassie is atrocious. However, the question for the jury is not whether the acts were horrible but rather, did Torey Adamcik commit the horrible act. Atrociousness goes to sentencing, not the guilt phase.

b. Are the photographs and evidence inflammatory?

The second inquiry: Is the evidence inflammatory, and if so, is such inflammation likely to be prejudicial beyond its probative value? As discussed above, the evidence is only tangentially relevant as to whether Torey Adamcik committed the crime. The evidence has very little probative value. As the Court is well aware, the photographs are horrendous and heart-wrenching. There are photographs of gruesome wounds. There are photographs of a young lady taken before her time with multiple wounds. There is much blood. There is absolutely no question that these photographs, and the clothing evidence, are inflammatory.

c. The evidence will inflame the jury to blame someone for the offense rather than objectively exploring facts.

Idaho Criminal Jury Instruction Number 106 clearly states that the jury is not to be concerned with punishment. This is the guilt/innocence phase of this case. There is one Defendant for this jury, and that Defendant is Torey Adamcik. The natural reaction for the jury, after seeing this inflammatory evidence and the photographs, is to want to punish someone for causing harm to an innocent individual. However, this evidence does not tend to prove, in any substantial way, that Torey Adamcik is responsible for Ms.

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Stoddart being in that condition. It is simply evidence that she is in that condition. This evidence is clearly more prejudicial than probative, and must be excluded on this basis.

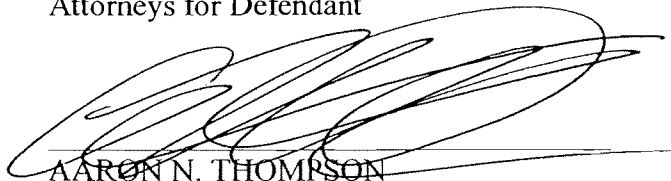
In two different cases, the Idaho Supreme Court upheld a District Court's decision to exclude prejudicial evidence. These cases are *State v. Page*, 135 Idaho 214, 220, 16 P3d 890, 896 (2000); and *State v. Phillips*, 117 Idaho 609, 611, 790 P2d 390, 392 (1990).

2. The evidence is cumulative. Presumably, the State will attempt to introduce both the clothing evidence and the pictures of Ms. Stoddart's body. The clothing, which comes directly from Ms. Stoddart's body, is depicted in several photographs at the crime scene. Why do both the photographs and the clothing need to be introduced? The pictures and the clothing items are being introduced for presumably the same reason. Allowing both to be introduced enhances argument number 1 – that the evidence is more prejudicial than probative. Both the pictures and the clothing, standing alone, are inflammatory on their own merit. Showing the jury the same evidence twice, both pieces which are highly prejudicial, is in direct contravention of Idaho Rules of Evidence. The State (at a minimum) should be ordered to limit production of one or the other.

In conclusion, this evidence is only tangentially relevant, if at all. The evidence is more prejudicial than probative, and admission of the evidence is cumulative. Due to this, the Court must enter an Order denying admission, and/or limiting production of such.

DATED this 9<sup>th</sup> day of May, 2007.

DIAL, MAY & RAMMELL, CHARTERED  
Attorneys for Defendant



AARON N. THOMPSON

811

CERTIFICATE OF SERVICE

I certify that on this date a copy of the *Memorandum in Support of Motion In Limine regarding Clothing, Autopsy Photographs, Photographs of Body, and Other Inflammatory Evidence* was served on the following named personal at the addresses shown and in the manner indicated.

Bannock County Prosecutor  
P.O. Box P  
Pocatello, ID 83205-0050

☒ U.S. Mail  
☐ Hand Delivery  
☐ Facsimile

DATED this 9<sup>th</sup> day of May, 2007.

812



DIAL, MAY & RAMMELL, CHTD.

812

MARK L. HIEDEMAN  
BANNOCK COUNTY PROSECUTING ATTORNEY  
P.O. Box P  
IDAHO FALLS, Idaho 83405-1219-0050  
(208) 236-7280

2017 MAY 14 PM 3:03

*KS*

**VIC A. PEARSON ISB#6429**  
Chief Deputy Prosecuting Attorney

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

413

STATE OF IDAHO,	)	
	)	CASE NO. CR-06-17984-FE-C
Plaintiff,	)	
	)	<b>TENTH SUPPLEMENTAL</b>
vs.	)	<b>RESPONSE TO REQUEST</b>
	)	<b>FOR DISCOVERY</b>
TOREY MICHAEL ADAMCIK,	)	
	)	
Defendant.	)	
_____	)	

TO: BRON M. RAMMELL, DIAL, MAY & RAMMELL, Pocatello, Idaho, Attorney for the Defendant.

COMES NOW, the State of Idaho, by and through VIC A. PEARSON, Assistant Chief Deputy Prosecuting Attorney in and for the County of Bannock, Idaho, and supplements its response to Defendant's Request for Discovery as follows:

RESPONSE NO. 4: The following is a list of documents and tangible objects that may used at the time of trial: **Please see the Amended Evidence List and Amended Property List, which are attached hereto and incorporated by reference: Hand writing analysis prepared by Det. Jeff Pratt, Idaho Falls Police Department – which will be supplied to defense counsel when received by this office.** Det. Pratt's Curriculum Vitae is attached hereto and incorporated by reference.

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RESPONSE NO. 5: The following is a list of physical or mental examinations and/or scientific tests or experiments made in connection with this case: **Please see the Amended Evidence List and Amended Property List, which are attached hereto and incorporated by reference: Hand writing analysis prepared by Det. Jeff Pratt, Idaho Falls Police Department – which will be supplied to defense counsel when received by this office.** Det. Pratt's Curriculum Vitae is attached hereto and incorporated by reference.

RESPONSE NO. 6: The following list of individuals may be called to testify at the time of trial: Please see the list of law enforcement and professional witnesses and civilian witnesses, which is attached hereto and incorporated by reference and includes **Det. Jeff Pratt, Idaho Falls Police Department.**

At the present time, to the best knowledge of the plaintiff, only the aforementioned individuals with an "\*" before their name have a record of felony convictions. Copies of the criminal histories for these individuals is attached hereto and incorporated by reference. For statements made by prosecution witnesses, please see police reports.

RESPONSE NO. 7: For reports or memorandum made by police officers, Please see Bannock County Sheriff's Department Offense Report No. 07-B0620, **Supplement Nos. 93 through 97 consisting of 4 pages** attached hereto and incorporated by reference.

The State reserves the right to supplement this response upon receipt of evidence not currently in our possession.

DATED this 7<sup>th</sup> day of May, 2007.

  
VIC A. PEARSON

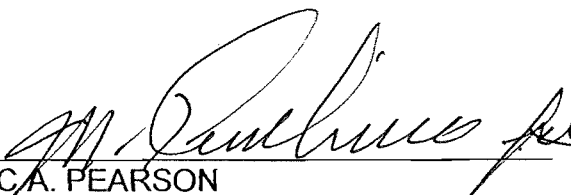
Chief Deputy Prosecuting Attorney

**CERTIFICATE OF DELIVERY**

I HEREBY CERTIFY That on this 7<sup>th</sup> day of May, 2007, a true and correct copy of the foregoing 10<sup>th</sup> SUPPLEMENTAL RESPONSE TO REQUEST FOR DISCOVERY was delivered to the following:

BRON M. RAMMELL  
DIAL MAY & RAMMELL  
P O BOX 370  
POCATELLO, ID 83204-0370

☐ mail -  
postage prepaid  
☐ hand delivery  
☒ facsimile 234-2961

  
VICA. PEARSON

815

STATE V. TOREY ADAMCIK & BRIAN DRAPER  
AMENDED EVIDENCE LIST

Specifics	Items	## Pgs	Given To Bron Rammell	Given To Randall Schulthies
<b>BRIAN DRAPER INFORMATION</b>				
	"Diary Entries" – 12/25/00, 08/21/01, 8/20/01, 12/19/01, 12/20/01, 12/24/01, 12/26/01, 06/07/04, 06/08/04, 06/27/04, 09/01/04, 02/11/05, 08/08/05, 08/11/05	15	11/14/06	11/14/06
	Witness statement	4	11/03/06	11/03/06
	Miranda Sheet dated 09/27/06	1	11/03/06	11/03/06
	Drawings dated 09/27/06	5	11/14/06	11/14/06
	Drawings dated 09/26/06	1	11/14/06	11/14/06
	Miranda Sheet dated 09/29/06	1	11/03/06	11/03/06
	Sketch of house with backyard	1	11/14/06	11/14/06
	Poems/sketches/pictures from Brian's bedroom	10	11/14/06	11/14/06
	10/24/06 Search of Brian Draper's Cell at the jail	6	11/14/06	11/14/06
	Document taken off Brian Draper's computer by Det. John Walker	13	11/14/06	11/14/06
	Police Copy of complaint	2	11/14/06	11/14/06
	Brian Draper's "MySpace.com" profile	2	11/14/06	11/14/06
	Fallenslipnot.com website	6	11/14/06	11/14/06
	Miranda Sheet dated 09/28/06	1	11/03/06	11/03/06
	"Black River" off of Draper's computer	12	12/19/06	12/19/06
	Report Supplement #79 with copies of letters written by Draper attached	18	12/19/06	12/19/06
	Draper Correspondence from Jail	87	12/19/06	12/19/06
	Data/Audio CD Call Queue Report for Draper	44	12/19/06	12/19/06
	Poem & 2 Letters from cell	7	02/26/07	02/26/07
<b>BANNOCK COUNTY SHERIFF'S DEPARTMENT DETECTIVES' NOTES</b>				
	Andy Thomas	44	11/14/06	11/14/06
	Andy Thomas – additional notes	10	12/19/06	12/19/06
	Doug Armstrong	56	11/14/06	11/14/06
	Mark Ballard	19	11/14/06	11/14/06
	Justin Cannon	2	11/14/06	11/14/06
	Alex Hamilton	60	12/19/06	12/19/06
	Alex Hamilton Research			
	Pages on Masks	12	12/19/06	12/19/06
	www.fallenslipknot.tripod.com	15	12/19/06	12/19/06
	Pictures	2	12/19/06	12/19/06
	Ed Gein	35	12/19/06	12/19/06
	American Psycho	12	12/19/06	12/19/06
	Toni Vollmer	104	02/26/07	02/26/07

STATE V. TOREY ADAMCIK & BRIAN DRAPER  
AMENDED EVIDENCE LIST

Specifics	Items	## Pgs	Given To Bron Rammell	Given To Randall Schulthies
	Tom Foltz	67	02/26/07	02/26/07
	<u>CASSIE STODDART</u>			
	Consent to Search signed by Anna Stoddart	1	11/14/06	11/14/06
	Medical Release and Record from Children's Clinic	14	11/14/06	11/14/06
	Driver's License Record and Criminal Check	2	11/14/06	11/14/06
	"MySpace.com" profile	19	11/14/06	11/14/06
	<u>CELLULAR TELEPHONE RECORDS</u>			
	Torey Adamcik	2	11/03/06	11/03/06
	Chronological Breakdown of calls between 09/22/06 and 09/24/06 prepared by Julie Donahue, ISPI	6	11/03/06	11/03/06
	Cellular telephone records prepared by Julie Donahue, ISPI	10	11/03/06	11/03/06
	<u>CRIME SCENE</u>			
	Schematics	14	11/14/06	11/14/06
	Sketches	19	11/14/06	11/14/06
	<u>EVIDENCE</u>			
	Idaho State Police Forensic Services Submission Form	2	11/14/06	11/14/06
	BCSO Property Record by Det. Toni Vollmer	6	11/14/06	11/14/06
	BCSO Evidence Submission Form by Det. Mark Ballard	6	11/14/06	11/14/06
	BCSO Property Record by Mark Ballard	16	11/14/06	11/14/06
	BCSO Evidence Submission Form by Det. Doug Armstrong	3	11/14/06	11/14/06
	BCSO Property Receipt by Det. Tom Foltz	1	11/14/06	11/14/06
	BCSO Property Record by Det. Tom Foltz	1	11/14/06	11/14/06
	BCSO Property Record by Det. Andy Thomas	1	11/14/06	11/14/06
	<u>IDAHO STATE POLICE NOTES</u>			
	Det. John Ganske	38	11/14/06	11/14/06
	Det. Gary Brush	34	11/14/06	11/14/06
	Det. Tom Sellers	18	11/14/06	11/14/06
	Det. John Kempf	19	11/14/06	11/14/06
	Det. Julie Donahue	50	11/14/06	11/14/06
	Det. Frank Csajko	22	11/14/06	11/14/06
	Det. Don Broughton	26	11/14/06	11/14/06

STATE V. TOREY ADAMCIK & BRIAN DRAPER  
AMENDED EVIDENCE LIST

Specifics	Items	## Pgs	Given To Bron Rammell	Given To Randall Schulthies
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<b>POCATELLO POLICE DEPARTMENT NOTES</b>				
	Det. Bill Collins	34	03/30/07	03/30/07
	Det. Roger Schei	43	03/30/07	03/30/07
	Det. Chad Higbee	8	03/30/07	03/30/07
<b>COMPACT DISCS / RECORDED INTERVIEWS</b>				
	Miscellaneous Discs	9	11/14/06	11/14/06
	911 Calls to Bannock Co. Sheriff s Dispatch, 9/24/06		10/17/06	10/17/06
	Home Video by Brain Draper and Torey Adamcik		10/17/06	10/17/06
	Transcript of Home Video		11/14/06	11/14/06
	Recordings of the answering machine		10/17/06	10/17/06
	ISU enhanced version of Adamcik & Drapers' Video		10/17/06	10/17/06
	ISP Crime Scene Sketch on Disc.		10/17/06	10/17/06
	CD of Photos from Draper Cell		12/19/06	12/19/06
	CD of Jail Calls & Visits with Draper and Adamcik		12/19/06	12/19/06
	CD of Autopsy Photos (recopy)		12/19/06	12/19/06
	CD of Lt. Vollmer's Work Product w/Dr. Garrison		03/08/07	03/08/07
	Interviews for September 25, 2006	3	10/17/06	10/17/06
	Anna Stoddart		10/17/06	10/17/06
	Victor Price		10/17/06	10/17/06
	Josephina Sisneros		10/17/06	10/17/06
	Interviews for September 26, 2006	5	10/17/06	10/17/06
	Matt Beckham 2nd Interview		10/17/06	10/17/06
	Matt Beckham 3rd Interview		10/17/06	10/17/06
	Brian Draper 2nd Interview 2 disc set		10/17/06	10/17/06
	Victor Price Polygraph		10/17/06	10/17/06
	Anna Stoddart V SA test		10/17/06	10/17/06
	Interview for September 27, 2006	8	10/17/06	10/17/06
	Matt Beckham Polygraph, 2 disc set		10/17/06	10/17/06
	Matt Beckham Post Polygraph Interview		10/17/06	10/17/06
	Torey Adamcik 2 <sup>nd</sup> Interview		10/17/06	10/17/06
	Brian Draper 3rd Interview (Confession) at BCSO		10/17/06	10/17/06
	Ronald Stoddart Interview		10/17/06	10/17/06
	Yolanda Stoddart Interview		10/17/06	10/17/06
	Adam Dykman Interview – Disc 1 or 2		12/19/06	12/19/06
	Adam Dykman / April Phillips Interview – Disc 2 of 2		12/19/06	12/19/06
	Interviews for September 28, 2006	3	10/17/06	10/17/06
	Brain Draper 4th Interview		10/17/06	10/17/06

STATE V. TOREY ADAMCIK & BRIAN DRAPER  
AMENDED EVIDENCE LIST

Specifics	Items	## Pgs	Given To Bron Rammell	Given To Randall Schulthies
	Amber Phillips Interview		10/17/06	10/17/06
	Joe Lucero Interview		10/17/06	10/17/06
	Interviews for September 29, 2006	4	10/17/06	10/17/06
	Brain Draper		10/17/06	10/17/06
	Amber Phillips		11/14/06	11/14/06
	April Phillips		11/14/06	11/14/06
	Matt & Sherri consent for DNA		11/14/06	11/14/06
	Interview for September 24, 2006	1		
	Frederick Hofmeister		02/26/07	02/26/27
	VIDEO/DVD'S	1/7		
	Low/No Light Video of Crime Scene and Area			
	Search Warrant of Adamcik Residence			
	Low Light Video of danny Dixon Residence			
	Crime Scene Video 1			
	Crime Scene Video 2			
	Search Warrant of Draper Residence			
	Post Search Video of Crime Scene Upon Completion			
	Higbee's VHS of Adamcik Search Warrant			
<b>LAW ENFORCEMENT CONTACT INFORMATION</b>				
	Richard Nelson	2	11/14/06	11/14/06
	Joy Nelson	2	11/14/06	11/14/06
	Dustin Jade Morgan photograph and information	4	11/14/06	11/14/06
	Ralph Nelson	2	11/14/06	11/14/06
	Derek Lindberg	16	11/14/06	11/14/06
	Daniel Warner	2	11/14/06	11/14/06
<b>LAB REPORTS</b>				
	ISP Forensic Services Evidence Submission Form – Det. Mark Ballard	2	11/14/06	11/14/06
	ISP Forensic Services Evidence Submission/Receipt Form – Det. Mark Ballard	1	11/14/06	11/14/06
	ISP Forensic Services Lab Report by Gary Cushman	3	12/19/06	12/19/06
	ISP Forensic Services Evidence Receipt and Property Report (List of items for testing.) Lab results possibly available by Mid February.	7	12/19/06	12/19/06
	NMS Lab Report for Cassie Stoddart Blod	2	01/10/07	01/10/07
	ISP Forensic Services Lab Report by Stacey Guess	5	02/26/07	02/26/07
	ISP Forensic Services Lab Report by Cynthia Hall	3	02/26/07	02/26/07

STATE V. TOREY ADAMCIK & BRIAN DRAPER  
AMENDED EVIDENCE LIST

Specifics	Items	## Pgs	Given To Bron Rammell	Given To Randall Schulthies
	ISP Forensic Services Lab DNA Restitution	1	02/26/07	02/26/07
	Dr. Garrison's Autopsy Report	4	03/08/07	03/08/07
	Forensic Biology Report Supplement #1	1	03/30/07	03/30/07
<b>MAJOR INCIDENT LOGS</b>				
	Letter Size pages	12	11/14/06	11/14/06
	Legal Size Pages	13	11/14/06	11/14/06
<b>MATT BECKHAM</b>				
	Consent to Search	1	11/14/06	11/14/06
	Picture	1	11/14/06	11/14/06
	Driver's License and Criminal check	2	11/14/06	11/14/06
	Statement	1	11/03/06	11/03/06
	Sketched Diagrams	3	11/14/06	11/14/06
	ISP Rights Form	1	11/14/06	11/14/06
	Sherri Beckham statement	1	11/14/06	11/14/06
	Driver's License Photo and information	1	11/14/06	11/14/06
	Finger Print Card	1	11/14/06	11/14/06
	Det. Andy Thomas Notes	2	11/14/06	11/14/06
<b>MISCELLANEOUS</b>				
	Pocatello Police Department Offense Report No. 04-P05848	7	11/14/06	11/14/06
	Pocatello Police Department Offense Report No. 04-P22062 – Supplements		11/14/06	11/14/06
	Confidentiality agreement	1	11/14/06	11/14/06
	Letter dated 10/18/06 from Bron Rammell	1	11/14/06	11/14/06
	Bannock County Sheriff's Department Offense Report No. 06-B4075	3	11/14/06	11/14/06
	Letter dated 09/29/06 from Don Cotant, Pocatello High School Principal	1	11/14/06	11/14/06
	Bannock County Sheriff's Department Offense Report No. 06-B4065	3	11/14/06	11/14/06
	Ralph Nelson Driver's License and Personal History	3	11/14/06	11/14/06
	Pocatello Police Department Offense Report No. 06-P25735	5	12/19/06	12/19/06
	Letter to Downard Hansen Funeral Home by Det. Thomas	1	12/19/06	12/19/06

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STATE V. TOREY ADAMCIK & BRIAN DRAPER  
AMENDED EVIDENCE LIST

Specifics	Items	## Pgs	Given To Bron Rammell	Given To Randall Schulthies
	Letters to Local Law Enforcement by Det. Thomas and Vic Pearson	10	12/19/06	12/19/06
	Map of Evidence Hiding Place & Measurements	2	12/19/06	12/19/06
	ISP Detailed History for Holbert call out	2	01/10/07	01/10/07
	Pocatello Police Offense Report No. 04-P22062 reference Nori Jones	223	03/16/07	03/16/07
	Western Pathology Associates Report of Autopsy Examination on Nori Jones	15	03/16/07	03/16/07
	<b>Det. Jeff J. Pratt, Document Examiner, Curriculum Vitae</b>	<b>7</b>	<b>05/07/07</b>	<b>05/07/07</b>
<b>NEIGHBORHOOD INFORMATION</b>				
	Neighborhood Platt	1	11/14/06	11/14/06
	Telephone Book Pages	2	11/14/06	11/14/06
	Address Information	1	11/14/06	11/14/06
	ISP Area Canvass Forms	16	12/19/06	12/19/06
<b>PHONE TIPS</b>				
	BCSO case Tip Sheets dated 09/25 & 26/06	5	11/14/06	11/14/06
	Hand Notes from Tips	2	11/14/06	11/14/06
	Information Control Sheets 1-26 & 28-30	29	11/14/06	11/14/06
	Hand Notes	1	11/14/06	11/14/06
	Power County Sheriff's Department Offense Report No. 01-2006-02801	5	11/14/06	11/14/06
	Information Control Filter Report	23	11/14/06	11/14/06
<b>PHOTO LINE UPS</b>				
	Line Ups	6	11/14/06	11/14/06
	Beckham Driver's License	1	11/14/06	11/14/06
	Adamcik Driver's License	1	11/14/06	11/14/06
	Photo	1	11/14/06	11/14/06
<b>PHOTOGRAPHS AND LOGS</b>				
	12 Pictures from Cassie Stoddart's Autopsy	2	11/14/06	11/14/06
	Compact discs	5	11/14/06	11/14/06
	Thumbnails from CDs	82	11/14/06	11/14/06
	Autopsy Photo Log	6	12/19/06	12/19/06
	Hand Written Photo Log by Alex Hamilton	25	12/19/06	12/19/06
	Brian Draper Cell	27	12/19/06	12/19/06



STATE V. TOREY ADAMCIK & BRIAN DRAPER  
AMENDED EVIDENCE LIST

Specifics	Items	## Pgs	Given To Bron Rammell	Given To Randall Schulthies
	Photographs of wall in Draper Cell from 11/15/06		03/16/07	03/16/07
	Photographs of wall in Draper Cell from 02/26/07	1 CD	03/30/07	03/30/07
<b>POCATELLO HIGH SCHOOL LOCKERS</b>				
	Copies of Video Boxes	7	11/14/06	11/14/06
	Book	7	11/14/06	11/14/06
	Bell Schedule	1	11/14/06	11/14/06
	Property Receipt from Cassie Stoddart's Locker	1	11/14/06	11/14/06
	Consent Form signed by Anna Stoddart	1	11/14/06	11/14/06
<b>LAW ENFORCEMENT REPORTS</b>				
	BCSO Offense Report No. 06-B4057	224	10/17/06	10/17/06
	UPDATED BCSO OR #06-B4057	281	12/19/06	12/19/06
	BCSO OR #06-B4057 Supplements 85, 86 & 87	3	02/26/07	02/26/07
	UPDATED BCSO OR #06-4057, includes Supplements through 91	308	03/16/07	03/16/07
	BCSO OR# 06-B4057 Supplement #92	1	03/30/07	03/30/07
	<b>BCSO OR# 06-B4057 SUPPLEMENT NOS 93 – 97</b>	<b>4</b>	<b>05/07/07</b>	<b>05/07/07</b>
	Autopsy Report by Steven Skoumal	15	10/17/06	10/17/06
	ISP Forensic Lab Crime Scene Inventory Report	7	11/14/06	11/14/06
	SIGNED ISP Forensic Lab Crime Scene Inventory Report	9	12/19/06	12/19/06
	ISP Forensic Lab Hand Written Notes by Skyler Anderson	9		
	ISP Investigations Report No. Z06000052 – Investigative Report List (2), Original (3) plus 23 supplements (57)	62	11/14/06	11/14/06
	PPD Offense Report No. 06-P21017	15	11/14/06	11/14/06
	Certification of Medical Records from Patti Knapp PMC	1	11/14/06	11/14/06
	FBI Hand Written Notes by Derwin Berg	3	12/19/06	12/19/06
<b>STATEMENTS</b>				
	Anna Stoddart	1	11/03/06	11/03/06
	Victor Price	2	11/03/06	11/03/06
	Frank Contreras	1	11/03/06	11/03/06
	Allison Serr-Contreras (includes diagram)	3	11/03/06	11/03/06
	Shelby McClusky	1	11/03/06	11/03/06
	Sheri Henderson	1	11/03/06	11/03/06
	Darrell Henderson	2	11/03/06	11/03/06

STATE V. TOREY ADAMCIK & BRIAN DRAPER  
AMENDED EVIDENCE LIST

Specifics	Items	## Pgs	Given To Bron Rammell	Given To Randall Schulthies
	Riley Smith	2	11/03/06	11/03/06
	Ethan Smith	2	11/03/06	11/03/06
	Christy Barbre drawing	1	11/03/06	11/03/06
	Copy of Reciepts from Ronald Stoddart	1	11/14/06	11/14/06
	Chris Mathews	3	12/19/06	12/19/06
	Adam Dykman	4	12/19/06	12/19/06
	Andrew Witcher	1	12/19/06	12/19/06
<b>SEARCH WARRANTS</b>				
	Affidavit of Probable Cause, Search Warrant, Return to Search Warrant for Computers, Cameras, Film etc.	23	11/14/06	11/14/06
	Affidavit of Probable Cause and Search Warrant, dated 09/27/06; Return to Search Warrant dated 10/11/06 for 1598 Point View	17	11/14/06	11/14/06
	Affidavit of Probable Cause and Search Warrant, dated 09/27/06; Return to Search Warrant dated 10/11/06 for 1030 Shale Drive	15	11/14/06	11/14/06
	Affidavit of Probable Cause and Search Warrant, dated 09/29/06; Return to Search Warrant dated 10/11/06 for Pocatello High School Locker #3124	14	11/14/06	11/14/06
	Affidavit of Probable Cause and Search Warrant, dated 09/29/06; Return to Search Warrant dated 10/11/06 for Pocatello High School Locker #2208	13	11/14/06	11/14/06
	Affidavit of Probable Cause and Search Warrant, dated 10/04/06; Return to Search Warrant dated 10/11/06 for 1598 Point View	15	11/14/06	11/14/06
	Petition for Detention and Order of Detention dated 10/04/06 for blood and hair samples and oral swabs; and Receipt, Inventory, Return of Detention Order dated 10/11/06 from Torey Adamcik	5	11/14/06	11/14/06
	Petition for Detention and Order of Detention dated 10/04/06 for blood and hair samples and oral swabs; and Receipt, Inventory, Return of Detention Order dated 10/11/06 from Brian Draper	5	11/14/06	11/14/06
	ISP Permission to Search signed by Frank Contreras	1	11/14/06	11/14/06
	PPD Permission to Search signed by Amber(?) and Doug Dykman	1	11/14/06	11/14/06

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STATE V. TOREY ADAMCIK & BRIAN DRAPER  
AMENDED EVIDENCE LIST

Specifics	Items	## Pgs	Given To Bron Rammell	Given To Randall Schulthies
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<b>TOREY ADAMCIK</b>				
	Notebook page – List of Supplies & Victims	1	11/14/06	11/14/06
	Police Copy of Complaint	2	11/14/06	11/14/06
	Hand Written notes of 09/27/06 Interview	7	11/14/06	11/14/06
	Written Statement	1	11/03/06	11/03/06
	ISP Rights Form	1	11/03/06	11/03/06
	Drawings dated 09/27/06	2	11/14/06	11/14/06
	Law enforcement information printout	5	11/14/06	11/14/06
	Driver's License printout	1	11/14/06	11/14/06
	Westmark Credit Union Savings Passbook	2	11/14/06	11/14/06
	"Ideas for the Movie"	5	11/14/06	11/14/06
	Notebook of sketches, sons & poems	49	11/14/06	11/14/06
	Love note from Jodi Chandler	1	11/14/06	11/14/06
	Handwritten Instructions for copying	1	11/14/06	11/14/06
	Dani Dixon's Yearbook Page	1	12/19/06	12/19/06
	Adamcik Correspondence from Jail	65	12/19/06	12/19/06
	Data/audio CD Call Queue Report for Adamick	53	12/19/06	12/19/06
<b>WEATHER SERVICE INFORAMTION</b>				
	<a href="http://aa.unso.navy.mil/cgi-bin/aa_pap.pl">http://aa.unso.navy.mil/cgi-bin/aa_pap.pl</a>	3	11/14/06	11/14/06
	Decoding a METAR observation by David Phelps	5	11/14/06	11/14/06
	Record of River and Climatological Observations	2	11/14/06	11/14/06
	<a href="http://www.weather.gov/climate/getclimate.php?wfo=pih">http://www.weather.gov/climate/getclimate.php?wfo=pih</a>	13	11/14/06	11/14/06

# **LAW ENFORCEMENT AND PROFESSIONAL WITNESSES**

UPDATED 04/30/07

## **BCSO**

ANDY THOMAS  
TOM FOLTZ  
ALEX HAMILTON  
DOUG ARMSTRONG  
DORA SMITH  
JOHN UNDERWOOD

TONI VOLLMER  
MARK BALLARD  
KAREN HATCH  
JUSTIN CANNON  
SCOTT SCHAFFER, RN

## **PPD**

JOHN WALKER  
SCOTT MARCHAND  
DEE O'BRIEN  
ROBB EGGIMANN  
LORA ROSA

BILL COLLINS  
ROGER SCHEI CORRECTION  
CHAD HIGBEE  
MIKE BRENNAN

## **ISP FORENSIC LAB**

DON WYCKOFF  
SHANNON LARSON  
ROCKLAN MCDOWELL  
CYNTHIA HALL

GARY CUSHMAN  
SKYLAR ANDERSON  
STACEY GUESS

## **OTHER FORENSIC LABS**

LEE BLUM, NMS LABS

## **ISP INVESTIGATIONS**

TOM SELLERS  
GARY BRUSH  
JULIE DONAHUE  
FRANK CSAJKO  
BETH BRADBURY

JOHN KEMPF  
DON BROUGHTON  
JOHN GANSKE  
JAMES CHRISTENSEN  
ED HOLBERT

## **DOWNARD FUNERAL HOME**

DAVE LANCE

## **MEDICAL PERSONNEL**

DR. STEVE SKOUMAL

DR. CHARLES GARRISON

WESTERN PATHOLOGY ASSOC.  
246 N 18<sup>TH</sup>, POCA TELLO  
233-3764  
PMC EAST  
777 HOSPITAL WAY, POCA TELLO  
234-0777

## **EXPERT WITNESS**

JEFF J. PRATT, DOCUMENT EXAMINER IFPD, 605 N CAPITOL, IDAHO FALLS

## CIVILIAN WITNESSES

MARY BLATTNER	13770 N WHITECLOUD POCATELLO, ID 83201	237-0203
JOSEPHINA SISNEROS	1143 N HARRISON POCATELLO, ID 83204	232-3561
ROBBIE McCOY (JUV)	1247 KINGHORN RD POCATELLO, ID 83201	237-7191
BRITTANY CORBRIDGE (JUV)	637 S HAYES AVE POCATELLO, ID 83204	317-5675
SANDRA GRAVES	11310 W WHISPERING CLIFFS, POCATELLO ID 83201	
SUSAN ASHTON	1256 KINGHORN RD APT D POCATELLO ID 83201	223-1021
KADEE PENA (JUV)	4957 BANNOCK HWY POCATELLO ID 83201	234-4574
826 ALYSSA ARMIJO (JUV)	777 GREED RD POCATELLO ID	234-3753
MICAH ASHTON (JUV)	1256 KINGHORN RD APT D POCATELLO ID	223-1021
RONALD YOUNG	11316 WHISPERING CLIFFS POCATELLO ID	
SHELBIE CAMMACK (JUV)	249 TAFT AVE POCATELLO ID 83204	637-2231
DAVID HOLTZEN (JUV)	635 RICHLAND AVE POCATELLO ID 83204	478-2669
CHRIS MATHEWS (JUV)	1040 MEMORY LANE POCATELLO ID 83201	237-2645 220-1154
TRACI SANTILLANES	11328 WHISPERING CLIFFS PCOATELLO DI 83202	238-7029
PAUL SISNEROS	1143 N HARRISON AVE POCATELLO ID 83204	232-3561
CINDY TARGETT	1236 KINGHORN RD POCATELLO ID 83201	637-0566 234-7500
DEXTER PITMAN	13689 N MARBLE DR POCATELLO ID 83202	
JERRY TARGETT	1236 KINGHORN RD POCATELLO ID 83201	637-0566
MARK OLSON (JUV)		
RAMANA RAYBORN	2344 HORIZON DR POCATELLO ID 83201	232-5835
TRACEY DUSTIN (JUV)	995 WILSON AVE #5 POCATELLO ID 83201	478-2151
HEATHER GRAVATT (JUV)	RT 2 BOX 55A (SILER ROAD) POCATELLO ID 83202	

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## CIVILIAN WITNESSES

HEATHER HARMON (JUV)	RT 2 N BOX 66	237-8410
	POCATELLO ID 83202	251-2596
TRISTIN ELDRIDGE (JUV)		
JOEL CUNNINGHAM (JUV)	1730 W QUINN RD #60	478-6823
	POCATELLO ID 83202	
KALEB GARDINER (JUV)	221 STUART AVE	232-1517
GARDNER	CHUBBUCK ID 83202	
AUBREY TAYLOR (JUV)	1046 MT MCGUIRE DR	233-3757
	POCATELLO ID 83204	
KEELY WATKINS (JUV)	1544 JUNIPER DRIVE	233-2343
	POCATELLO ID 83201	
TIFFANY CHAVEZ (JUV)		
ASHLEY OMANS (JUV)	1257 RIDGE ST	637-1115
	POCATELLO ID 83201	
ANGELA SMITH	92 TOPONCE ST	233-0020
	POCATELLO ID 83204	233-7541
ALEXIS ANDERSON (JUV)	5005 CHINOOK ST	234-4917
	POCATELLO ID 83204	251-3474
JIM WORKMAN (JUV)	5104 APACHE AVE	233-4258
	POCATELLO ID 83204	
JOSEPH THOMAS LACEY (JUV)	969 HIGHLAND BLVD	234-1537
	POCATELLO ID 83204	
DARRELL WAYNE HENDERSON	11500 WHISPERING CLIFFS	237-5816
	POCATELLO ID 83202	
SHARI DORA HENDERSON	11500 WHISPERING CLIFFS	237-5816
	POCATELLO ID 83202	
FRANK CONTRERAS	11372 WHISPERING CLIFFS	237-1899
	POCATELLO ID 83202	
ALLISON SERR-CONTRERAS	11372 WHISPERING CLIFFS	237-1899
	POCATELLO ID 83202	760-0305
SHERI BECKHAM	1505 EASTRIDGE DR 13	478-2005
	POCATELLO ID 83201	
MATTHEW PATRICK BECKHAM	1505 EASTRIDGE DR 13	478-2005
(JUV)	POCATELLO ID 83201	
AMBER CHANTEAL PHILLIPS (JUV)	234 NORTH 9 <sup>TH</sup>	223-4152
	POCATELLO ID 83201	
APRIL PHILLIPS (JUV)	234 NORTH 9 <sup>TH</sup>	223-4152
	POCATELLO ID 83201	
ELLEN MAE PHILLIPS	234 NORTH 9 <sup>TH</sup>	223-4152
	POCATELLO ID 83201	
WADE DOUGLAS SEMONS	11396 WHISPERING CLIFFS	238-0629
	POCATELLO ID 83202	

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## CIVILIAN WITNESSES

WILLIAM ANDREW SEMONS (JUV)	11396 WHISPERING CLIFFS POCATELLO ID 83202	238-0629
RANDALL P HARRIS	11344 WHISPERING CLIFFS POCATELLO ID 83202	
GABE JOEL JARDINE (JUV)	1499 SEIRRA DR POCATELLO ID 83202	237-0872
JENNIFER LYNNETTE JARDINE	1499 SEIRRA DR POCATELLO ID 83202	237-0872
KERRY LYNN DRAPER	1030 SHAEL DR PCOATELLO ID 83204	232-1067
PAMELA DRAPER	1030 SHAEL DR PCOATELLO ID 83204	232-1067 317-8789
SEAN THOMAS ADAMCIK	1598 POINTE VIEW POCATELLO ID 83201	
MATTHEW LANHAM (JUV)	1730 W QUINN RD #237 POCATELLO ID 83202	237-6531
RILEY SMITH (JUV)	9871 E SHELMAN ST BOISE ID	672-8688 724-7215
ETHAN SMITH (JUV)	9871 E SHELMAN ST BOISE ID	672-8688
KRISTEN BARTA (JUV)	1313 W QUINN RD POCATELLO	237-0350
MIRANDA CHACON (JUV)	2695 VIA VALDARNO POCATELLO ID 83201	
DANNI DIXON (JUV?)	11880 PHILBIN RD POCATELLO ID 83202	238-1778
SHAYLYN MCINTIRE (JUV)	1517 N GARFIELD AVE POCATELLO ID 83204	232-3268 223-8291
ADAM DYKMAN (JUV)	1320 W ELDREDGE RD POCATELLO ID 83201	237-2893
VICTOR PRICE	1256 KINGHORN DR #C POCATELLO ID 83201	223-4602
BROOKE ARELLANO (JUV)	4773 WHITAKER RD CHUBBUCK ID 83202	637-0981
ANDREW WITCHER (JUV)	843 N ARTHUR AVE POCATELLO ID 83204	232-5231
SHELBY MCCLUSKEY (JUV)	11372 WHISPERING CLIFFS POCATELLO ID 83202	237-1889
CHEYENNE MCCLUSKEY (JUV)	11372 WHISPERING CLIFFS POCATELLO ID 83202	237-1889
DYLAN CONTRERAS (JUV)	11372 WHISPERING CLIFFS POCATELLO ID 83202	237-1889

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## CIVILIAN WITNESSES

ANNA STODDART	1256 KINGHORN RD APT C	232-3561
	POCATELLO ID 83201	232-8890
FREDERICK HOFMEISTER (JUV)	855 W SUBLETTE ST	406-4965
	POCATELLO ID 83204	
JOE LUCERO	517 N 14 <sup>TH</sup> AVENUE	380-1687
	POCATELLO ID 83201	



**Jeff J. Pratt**  
**Document Examiner**  
**Idaho Falls Police Department**

**Qualifications:**

Detective Jeff Pratt of the Idaho Falls Police Department, Idaho Falls, Idaho attended the Federal Law Enforcement Training Center in Glynco, Georgia in 1991 completing the United States Secret Service "Question Document Coarse ". Detective Pratt was sponsored by Secret Service Special Agent Chuck Haverd.

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Detective Pratt served in the capacity of Fraud Investigator for the Idaho Falls Police Department and surrounding Law Enforcement jurisdictions from January 1990 through August 1996.

March 1991 through July 1994 Detective Pratt served as the second Examiner under Document Examiner Earl D. Harryman of the Idaho Falls Police Department in the Fraud - Forgery / Question Document Section.

Detective Pratt has also additional "Question Document" and "Document Examiner" training from the Western States Fraud Investigators Association as well as The Idaho Fraud Investigators Association.

After completion of the United States Secret Service "Question Document Examination Coarse", Detective Pratt was supervised and mentored on an occasional basis for 2½ years by Boise Police Department "Document Examiner" Richard Miller and Idaho State Police, Department of Criminal Identification laboratory "Document Examiner" Jack Jaquess.

Detective Pratt has maintained Proficiency in Document Examination by attending workshops, seminars and conferences offered by the American Society of Question Document Examiners (ASQDE), the American Academy of Forensic Sciences (AAFS).

Detective Pratt has conducted Document Examinations for numerous South Eastern Idaho Law Enforcement agencies as well as agencies in the states of Wyoming and Utah.

Additional Document Examinations have been performed for civil cases by contract with a number of Idaho Attorney's.

Detective Pratt has been accepted as an Expert Witness in the field of Document Examination in the Idaho State Courts in the Magistrate and District courts in Bonneville County, Bannock County, Jefferson County, Fremont County, and Madison County.

Detective Pratt has also been recognized as an Expert witness – Document Examiner by the Lincoln County Prosecutor in the State of Wyoming, stemming from a joint Criminal Case which involved Lincoln County Sheriff's Department, the Idaho Falls Police Department and the Bonneville County Sheriff's Department.

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Detective Pratt has continued to perform Question Document Examinations from March of 1991 through the present and has testified in all phases of trial proceedings related to Document Examination.

Detective Pratt has also obtained a Masters Certificate in Law Enforcement from Idaho Police Officers Standards & Training (POST) Academy and completed the Advanced Crime Scene Reconstruction Course from the National Crime Investigators Training (NCIT). General Crime Scene Investigation training from Public Agency Training Council (PATC)

Additional accomplishments: Detective J. Pratt was the originating author of the Idaho Falls Police Departments Field Training Manual. Served as an instructor in the training of veteran police officers in teaching new recruits. Narcotics & Vice investigator assigned in the Western United States 1985 through 1990. Multiple tours of duty in Patrol Division. 2002 to present assigned as Lead investigator in Major & Violent crimes. Crime Scene Investigation and reconstruction.

Interdepartmental instruction in all aspects of forensic science, evidence collection and interpretation.

Detective Pratt generates complete and concise reports of findings related to Document Examinations, including computer presentations of evidence related to writing, such as "habit", "traits", "characteristics" and "features" specific to a person.

## **Detective Jeff Pratt**

### **Biographical Data:**

Born in Idaho Falls, Idaho and attended Idaho State University in the study of Criminal Justice / Political Science with a minor in Psychology. Attended the Idaho State University Vocation Technical School in Law Enforcement and Graduated top of the class in 1981. Held the office of Vice President of the Class.

Employed by Idaho Falls Police Department 1981 to present. Served as Special Investigator for the Idaho State Attorney General 1992-1994.

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Detective Pratt is currently assigned as Major & Violent Crimes Investigator with the Idaho Falls Police Department and has extensive training in several disciplines of forensic science.

## **Common Questions related to Question Document Examination**

### **Question Document Examination – Handwriting Identification**

An individual's handwriting is recognized as a form of identification. By this form of identification people sign documents to authenticate, authorize or certify the document. Document Examiners use Known or Collected writing from both victims and suspects and determine specific traits or habits of writing to identify a person as the writer or disqualify a person as having written or signed a document.

#### **What is a Forensic Document Examiner?**

A forensic document examiner examines documents to determine authenticity and or to discover who wrote them. The Document Examiner will then be called as an expert witness to testify present evidence and demonstrate traits or habits found in the writing that provide the identification.

#### **What type of training is required to do this type of work?**

The amount of training that is generally acceptable for document examination is 2 to 4 years in a full time capacity, as an apprentice in a Crime Lab - Question Document Section or under the direct supervision of a qualified document examiner.

#### **How can handwriting be identified?**

No two people write exactly the same. Individuals develop their own traits and habits in their writing. These traits and habits are identifiable.

#### **Can handwriting always be identified?**

No. Several factors can prevent identification of handwriting. Some of these factors are: Insufficient known or questioned writing. Questioned writing may be disguised or forced to the degree identification is not possible.

### **Can printed and cursive writing be compared?**

A limited comparison can be preformed, but generally hand printing should be compared to hand printing and cursive writing to cursive writing. The writing or printing compared also need to contain common letters.

### **Can a Document Examiner compare the signature from one document to a signature on another and make a determination?**

A sufficient sample of known similar writing must be used for comparison to a questioned signature for a conclusive opinion. This allows for normal variation in writing.

### **What is variation in writing?**

Every persons writing contains variation. A person will never write or sign two signatures exactly the same. External factors including speed, care, age, illness, intoxication or medication, writing position and instrument as well as other elements have some effect on a persons writing.

### **Can a document examiner determine if a writer is male or female? Or right or left handed?**

It is rarely possible to determine conclusively if a person is right or left handed. There is no way to determine the gender of a writer.

### **Does writing remain the same through out our lifetime?**

Some people will maintain the same appearance in their writing for most of their lives. Others may see their writing improve or deteriorate depending on how much they write their health or injuries and dedication to writing.

### **How much writing is needed for a Handwriting examination and comparison?**

This is not a hard and fast rule, as with each person it will vary. Enough writing is needed from each person involved to determine the significant characteristics or habits / traits of that person. The writing is also used to establish the range of natural variation.

Know writing is writing collected from suspect(s) and should be done on a handwriting exemplar. If a signature is questioned, additional samples should be collected by requesting the writer to "sign" the questioned signature name. During this collection of known writing it is important to watch the person giving the sample for signs they are trying to disguise their writing.

Known writing should also be collected from the victim on an exemplar. If possible also request "collected standards" which in recent normal course of business writing. i.e. person checks, bank or employment documents, legal documents, receipts, personal letters or other writing authenticated by the victim.

Always get more writing than you think will be needed.

### **Why are many Document Examinations determined to be inconclusive?**

Any one or more of the following reasons may cause an inconclusive result on an examination:

Disguised handwriting, Drug or alcohol use, insufficient quantity of known or questioned writing, cursive comparison to printing, same letters or letter combinations in both writings to be compared. In some questioned writing there can be very few identifiable characteristics to make it unidentifiable. Illegible scrawls or scribbles with no defined letters are not comparable.

### **Can Photocopies or Fax copies be used for questioned documents?**

These can be examined on a more limited level. Photocopies and or faxes conceal fine detail left behind from the instrument, such as ballpoint pen striations and pen lines. Copy and fax also mask or loose evidence of tracing and cut & paste. It is much more difficult to determine simulation writing when using photocopy, fax or electronic signature devices.

### **Can a document be examined and finger printed?**

If finger printing of the document is also required, it should be handled and packaged accordingly and submitted with a notation of that request. The document examination must be done first as Ninhydrant will cause the ink to bleed slightly and blur the writing, rendering it useless for examination and

comparison. Package the questioned document in a page protection sleeve and mark on the border of the sleeve "Print(s)".

**Can an examiner determine personality from handwriting?**

No. This is the study of Graphology or Graphoanalysis and is not practiced by Document examiners.

**Can an examiner tell if the ink on a document came from a specific pen?**

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No, it is not possible to distinguish one pen from another similar or like pen. Examination can show that the ink from a pen is similar or different to that found on a document depending on what is revealed in testing.

On documents that have been altered by use of a different pen, an examiner can record a photograph of the document in its original configuration by use of alternate light sources, and other procedures.

**How long do handwriting examinations or question document examinations take?**

There is no accurate measure for the time needed. It varies on each case and by other factors such as the amount and number of Known and Questioned documents submitted. The number of items to be compared and the quality of the writing, known & questioned. The quality of the examination will not be compromised to expedite the case.

05/07/07  
08:17

Deputy Supplemental Report

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Page: 1

Incident Number: 06-B4057 Nature: HOMICIDE

Incident Date: 04/18/07

Name: MARK BALLARD Date: 16:14:00 04/10/07

Supplement 93

Supplement to LI #: 06-B4057 Detective M. Ballard, #2107

Incident: Homicide  
Tue Apr 10 16:19:40 MDT 2007  
-----

On 04/09/07, I received a call from Gary Cushman, I.S.P. Fingerprint Specialist. He advised me he had fingerprinted the multi colored mask, item #12 from the Blackrock items, and located the fingerprint of Brian Draper on this mask. He indicated he would prepare a document with this information and send it to us or to the prosecutor.

On 04/10/07, Lieutenant Toni Vollmer assigned me to get a CD from Captain Mike Sanders that would be of the 911 call made by Allison Contreras. She requested I meet with Allison Contreras, John Underwood, and Laura Rosa and have the three of them listen to the 911 call and verify it was a copy of the actual call and to initial and date it. This was completed and turned over to Vic Pearson the same day.

End of Supplemental Report

-----  
Incident Number: 06-B4057 Nature: HOMICIDE

Incident Date: 04/18/07

Name: MARK BALLARD Date: 10:25:11 04/18/07

Supplement 94  
M. Ballard  
06-B4057

Evidence used in the Trial of Brian Draper.

4-13-07 10:00 from Amber. All items from Blackrock.  
Sheath, item #3-6, found by R.Schei.  
Cassie's jacket#12, pajamas#29, shirt#30, panties#31.  
Video Camera #9-11, found by D. Armstrong.

4-13-07 10:35 to Doug Armstrong.  
Video Camera.

4-13-07 15:25 to Vic Pearson. (Court)  
Sheath .

Remaining items locked in Det. Interview Room overnight due to  
4-14-07 being Saturday.

4-14-07 11:30 to 6th District Court.  
Jacket, pajamas, shirt, panties.  
All blackrock items.

837



05/07/07  
08:17

Deputy Supplemental Report

476  
Page: 2

The packaging was returned to me and placed in C.

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Incident Number: 06-B4057 Nature: HOMICIDE Incident Date: 04/18/07

Name: MARK BALLARD Date: 17:28:36 04/18/07

Supplement 95  
06-B4057  
M. Ballard

4-18-07 13:35 Picked up all items used in Draper trial from 6th  
District Court. Kathy Smith. (Assisted by Vollmer,  
Thomas, Hatch)  
(court order)

4-18-07 15:30 All but 2 items to Amber Spencer. Evidence Tech.  
16:30 Shipped 2 items via FedEx. Calvin Klein Shirt & Puma Gloves.  
(court order)  
To: FORENSIC LABORATORY  
CRIME SCENE TECHNOLOGIES, LLC  
11125 FLINTKOTE AVE, SUITE A  
SAN DIEGO, CA 92121

-----  
Incident Number: 06-B4057 Nature: HOMICIDE Incident Date: 04/20/07

Name: MARK BALLARD Date: 13:07:18 04/19/07

Supplement 96  
06-B4057  
M. Ballard

4-19-07 10:20 Fingernails (Cassie's) from Amber Spencer. They were  
in the sexual assault kit. Per: Hiedeman

4-19-07 11:30 Fingernails shipped to Forensic Lab in San Diego. FedEx.

4-20-07 9:30 Attorney Brian Cheney met me at SO. Viewed 4 knives.  
Amber Spencer present and maintained custody. 25 minutes.

End..

05/07/07  
08:17

Deputy Supplemental Report

Page: 476  
3

-----  
Responsible LEO:

-----  
Approved by:

-----  
Date

839

839

05/03/07  
09:55

Deputy Supplemental Report

476  
Page: 1

Incident Number: 06-B4057 Nature: HOMICIDE

Incident Date: 05/02/07

Name: TONI VOLLMER Date: 07:21:51 05/02/07

Supplement 97

Lt. Toni Vollmer, #2100

Incident #: 06-B4057

On April 9, 2007, while preparing for trial with Prosecutor Mark Hiedeman, I took several measurements of the four knives obtained in the Black Rock Canyon burial site. The measurements are as follows:

Dagger (Item #13)

End to End	12 3/4 Inches	32 CM
Hilt to Blade Tip	7 5/8 Inches	19 1/2 CM

Folding Serrated Knife with Black Grip (Item #18)

End to End	9 3/4 Inches	25 CM
Tip to Start of Serration	3 7/16 Inches	7 CM
Serration Area	1 3/4 Inches	4 1/2 CM
Serration		1/2 CM
Widest Point of Blade	1 3/16 Inches	3 CM

Sloan Knife (Item #14)

End to End	11 1/4 Inches	29 CM
Hilt to Blade Tip	6 5/16 Inches	16 CM
Hook to Tip	5 11/16 Inches	13 CM
Widest point of Blade	1 6/16 Inches	3 1/2 CM

Small Dagger (Item #15)

End to End	10 Inches	26 CM
Hilt to Tip of Blade	5 11/16 Inches	14 1/2 CM
Widest point of Blade		5/8 CM
Hilt to start of Blade		5/8 CM

End of report.

-----  
Responsible LEO:

-----  
Approved by:

-----  
Date

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MARK L. HIEDEMAN  
BANNOCK COUNTY PROSECUTING ATTORNEY  
P.O. Box P  
IDAHO FALLS, Idaho 83405-1219-0050  
(208) 236-7280

7-11-11  
JUL 16 2011  
Ks

**VIC A. PEARSON ISB#6429**  
Chief Deputy Prosecuting Attorney

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
TOREY MICHAEL ADAMCIK, )  
 )  
Defendant. )  
\_\_\_\_\_ )

CASE NO. CR-06-17984-FE-  
  
**ELEVENTH SUPPLEMENTAL  
RESPONSE TO REQUEST  
FOR DISCOVERY**

TO: BRON M. RAMMELL, DIAL, MAY & RAMMELL, Pocatello, Idaho, Attorney for the Defendant.

COMES NOW, the State of Idaho, by and through VIC A. PEARSON,  
Assistant Chief Deputy Prosecuting Attorney in and for the County of Bannock, Idaho,  
and supplements its response to Defendant's Request for Discovery as follows:

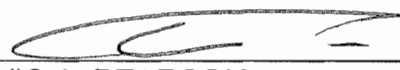
RESPONSE NO. 4: The following is a list of documents and tangible objects that may be used at the time of trial: **Please see previously provided property records from Detective Mark Ballard and Chain of Custody for said property attached hereto and incorporated by reference. Also, Detective Jeff Pratt's Question Document Examination Report and accompanying CDs attached hereto and incorporated by reference.**

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RESPONSE NO. 7: Please see Bannock County Sheriff's Department Offense Report No. 06-B4057, **supplement nos. 97 through 99, and 94 through 95 showing chain of custody during the trial of Brian Draper previously provided to defense counsel but also attached hereto and incorporated by reference.**

The State reserves the right to supplement this response upon receipt of evidence not currently in our possession.

DATED this 14 day of May, 2007.

  
VIC A. PEARSON  
Chief Deputy Prosecuting Attorney

**CERTIFICATE OF DELIVERY**

I HEREBY CERTIFY That on this 14 day of May, 2007, a true and correct copy of the foregoing RESPONSE TO REQUEST FOR DISCOVERY was delivered to the following:

BRON M. RAMMELL  
DIAL MAY & RAMMELL  
P O BOX 370  
POCATELLO, ID 83204-0370

☐ mail -  
postage prepaid  
☒ hand delivery  
☐ facsimile 234-2961

  
VIC A. PEARSON

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CLERK  
DISTRICT COURT  
COUNTY OF THE CROW

2007 MAY 17 AM 11:17

BY Key  
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
IN AND FOR THE STATE OF IDAHO, COUNTY OF BANNOCK**

**STATE OF IDAHO,**

**Plaintiff,**

**vs.**

**TOREY MICHAEL ADAMCIK,**

**06-14-1990**

**Defendant.**

**CASE NO. CR2006-17984FE-AA**

**MINUTE ENTRY AND ORDER**

84<sup>th</sup>  
Defendant appeared this 14<sup>th</sup> day of May, 2007, pursuant to the State's First, Second, Third, and Fourth Motions in Limine and Defendant's Motion in Limine re: Clothing, Autopsy Photographs, Photographs of Body, and Other Inflammatory Evidence, with counsel Bron Rammell and Aaron Thompson. Mark L. Hiedeman, Bannock County Prosecuting Attorney, and Ken Webster, Deputy Prosecuting Attorney, appeared on behalf of the State.

The Court received oral argument regarding the State's First Motion in Limine requesting the transcript of the homemade video being submitted to the jury but not until deliberation.

NOW, THEREFORE, IT IS HEREWITH ORDERED the State's First Motion in Limine is PARTIALLY GRANTED as follows: the motion resolved by stipulation of counsel due to the transcript currently being prepared by Defendant. If a Stipulation

cannot be reached the Court will grant the Motion and the State will be allowed a copy of the transcript published to the jury upon reaching deliberation with an appropriate jury instruction, in case of a question, to rely on the videotape and not the transcript. The Court shall be advised on Monday, May 21, 2007, whether or not the parties have stipulated.

The Court received oral argument regarding the State's Second Motion in Limine to allow Det. Vollmer and Det. Thomas to sit at counsel table during the trial.

IT IS FURTHER ORDERED the State's Second Motion in Limine is GRANTED and Det. Toni Vollmer and Det. Andy Thomas are allowed to sit at counsel table during the trial in this matter. Further, defense counsel will also be allowed support staff at counsel table.

The Court thereafter advised counsel that all non-testifying witnesses will not be allowed in the courtroom during other witnesses' testimony. Each party shall be responsible for their witnesses and whether they should be present or not. An exception will expert witnesses. The Court further advised each party shall have twelve (12) peremptory challenges. Twelve (12) jurors with two (2) alternates will be selected. At the conclusion of the trial the two (2) alternate jurors will be selected by lot. The Court further advised that Saturday(s) will be trial days.

The Court thereafter received oral argument regarding the State's Third Motion in Limine regarding the playing of a copy of the homemade video during deliberation in order to preserve the original videotape. The original and the copy will be submitted for deliberation.

IT IS FURTHER ORDERED that when the jurors reach deliberation the original

homemade video as well as a copy thereof will be submitted.

The Court thereafter received oral argument regarding State's Fourth Motion in Limine regarding the jurors being taken to the Whispering Pines home as well as to the Black Rock area.

IT IS FURTHER ORDERED the State's Fourth Motion in Limine to take jurors to the Whispering Pines home and Black Rock area is DENIED.

The Court thereafter received oral argument regarding Defendant's Motion in Limine Re: clothing, autopsy Photographs, Photographs of Body, and Other Inflammatory Evidence.

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IT IS FURTHER ORDERED as the evidence regarding clothing, autopsy photographs, photographs of body, etc., are offered if same is considered by the Court to be relevant and the probative value not outweighed by the prejudicial value then it will be admitted.

IT IS SO ORDERED.

DATED this 14<sup>th</sup> day of May, 2007.

  
PETER D. McDERMOTT  
District Judge

Copies to:  
Mark L. Hiedeman/Vic A. Pearson  
Aaron Thompson/Bron Rammell



CLERK OF DISTRICT COURT  
2007 MAY 17 PM 4:09  
Ks

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

Register #CR-06-17984-FE

STATE OF IDAHO,

Plaintiff,

-vs-

TOREY ADAMCIK,

Defendant.

MEMORANDUM DECISION  
AND ORDER ON DEFENDANT'S  
MOTION TO SUPPRESS

The Court has before it Defendant Torey Adamcik's Motion to Suppress a Videotaped Interview with law enforcement. The Court has reviewed the Defendant's Memorandum in Support of the Motion to Suppress, the Affidavits of Sean Adamcik, Shannon Adamcik and Aaron Thompson in Support of said Motion as well as the videotaped interview the Defendant requests to have suppressed. On May 2, 2007, the Defendant's Motion came before the Court for purposes of a suppression hearing. Bron Rammell and Aaron Thompson appeared on behalf of the Defendant, and Mark Hiedeman and Vic Pearson of the Bannock County Prosecutor's Office appeared on behalf of the State. The Court heard testimony from Sean Adamcik, Shannon Adamcik, Detective John Ganske, Detective Andy Thomas, Detective Scott Marchand, and Dr. Greg DeClue, as well as oral argument from both the Defendant and the State. The Court, having heard the testimony and examined the proof offered by the respective parties, makes the following findings of fact and conclusions of law.

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## STATEMENT OF FACTS AND PROCEDURAL HISTORY

This case involves the alleged First Degree Murder and Conspiracy to Commit the Murder of Cassie Jo Stoddart. The Defendants charged with these crimes, Torey Adamcik and Brian Draper, were at the time of the alleged crimes high school classmates of Ms. Stoddart.<sup>1</sup> The investigation of Ms. Stoddart's death led law enforcement to conduct two separate interviews with Torey Adamcik (hereafter, "Torey"). The first interview of Torey took place the evening of September 24, 2006, two days after Ms. Stoddart was allegedly murdered. The second interview, and the interview that serves as the basis for Torey's present Motion to Suppress, was conducted on September 27, 2006, at the Pocatello Police Department.

On January 16, 2007, Torey filed a Motion to Suppress the Videotaped Interview and/or Portions Thereof and Memorandum in Support (hereafter, "Memo. in Support"). Torey bases the Motion on the grounds that his mother, Shannon Adamcik, (hereafter, "Shannon") invoked his right to counsel, which was disregarded. Torey also asserts that he did not knowingly, intelligently and voluntarily waive his right to counsel. Additionally, Torey asserts once he did invoke his right to counsel, his assertion was also disregarded. From the evidence and the testimony presented at the suppression hearing and the record in this case the Court arrives at the following summary of facts and circumstances.

The first interview of Torey on September 24, 2006, was conducted at Torey's home and both Sean Adamcik, Torey's father (hereafter, "Sean"), and Shannon were present. The interview was not recorded. Torey denied that either he or Brian Draper was involved with Ms. Stoddart's death. Torey was not in custody for purposes of an interrogation, nor was he informed of his *Miranda* rights. Torey was asked to give a written statement addressing the

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<sup>1</sup> The Court granted the Defendants' motions for their cases to be tried separately and severed the case on January 24, 2007.

chain of activities that he was engaged in on the night Ms. Stoddart died. Torey did so, denying any involvement in Ms. Stoddart's death, and the interview concluded.

8.48 In the interim period between when Torey was first interviewed on September 24, 2006, and September 27, 2006, law enforcement had conducted three separate interviews of Brian Draper. Draper's third interview was conducted on the afternoon of September 27, 2006, at the Bannock County Sheriff's Department. Over the course of the third interview, Draper changed the information he had originally given to the Detectives in his first and second interviews and indicated that Torey had in fact stabbed Ms. Stoddart, but Draper did not. Draper also informed the Detectives that after he saw Torey stab Ms. Stoddart, Draper and Torey left the scene together, went to Torey's house for a brief period and then buried several items, including knives used to carry out Ms. Stoddart's stabbing and a homemade videotape the two made depicting their plan to kill Ms. Stoddart at a location in Bannock County known as Black Rock Canyon,. Draper was then turned over to Detective Alex Hamilton and a team of law enforcement whom accompanied Draper to Black Rock Canyon to locate the items. Draper was then arrested and placed in custody.

Torey was interviewed later that evening at the Pocatello Police Department. While at work that day, Sean was approached by law enforcement, and was driven by the law enforcement to an attorney's office where he was to meet Shannon and Torey.<sup>2</sup> Prior to Torey's interview, Torey, Sean and Shannon met with their attorney and then went to the police station. At the interview the following people were present: Torey, Sean, Shannon, Bannock County Detective Andy Thomas, Detective Marchand and Lieutenant Detective John Ganske. Upon arriving at the police station, Sean and Shannon met with the Detectives for approximately thirty minutes to one hour while Torey waited in the hall. The Detectives told Sean and Shannon that

<sup>2</sup> Sean was unable to recall at the suppression hearing the exact name of the officer that visited him at work.

there were inconsistencies in Torey's story. At this time, Shannon objected to the interview going forward. Shannon asked the Detectives if the interview could be conducted at the Adamciks' home, or if the interview could instead take place the following day. Shannon told the Detectives that part of the reason she wanted the interview to be conducted the following day was because she needed to pick up her other son from a football game.

The Detectives informed the Adamciks that they wanted the interview to go forward that night. Detective Ganske told the Adamciks that they would have a more successful interview if the interview could be conducted without Sean and Shannon being present because the chances of Torey being honest would be greater. Shannon informed the Detectives that she would not allow the interview to go forward unless she and Sean were present. Thereafter, Sean indicated that Torey wanted to cooperate. Shannon also agreed to go forward as long as the interview could be stopped at any time. *See, Affidavit of Shannon Adamcik*, p. 3. At this point, Sean, Shannon and Torey were led directly into an interrogation room.

The series of events leading up to the interview are in dispute. Sean testified that while the Adamciks were at the attorney's office before going to the police station, Detective Ganske called Sean and asked him where they were, advising them that they were late for the interview. Sean testified that when he told Ganske he was meeting with an attorney, Ganske stated, "See you in 30 minutes." Sean stated that he did not feel like he had a choice of whether or not the Adamciks could refuse to go to the police station. Sean stated that he feared if the Adamciks did not go to the police station, all three of them would be arrested. Sean testified that while at the attorney's office, the attorney advised the Adamciks not to speak with the Detectives unless the attorney could be present. Sean stated that he and Shannon advised the Detectives that an attorney would be available the following day, and accordingly, they requested that the interview

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go forward the next day. Thereafter, Sean testified, Detective Marchand became very angry and quite vocal with the Adamciks.

In her Affidavit, Shannon also asserts she told the Detectives that their attorney advised the Adamciks not to speak with the police. *Affidavit of Shannon Adamcik*, pp. 2, 3. Shannon testified that she told the Detectives the Adamciks had retained an attorney and the interview should go forward the following day when their attorney was available. Shannon asserts in her Affidavit and on the stand that the Detectives became angry at her requests and were noticeably frustrated and impatient with her. Shannon also testified that Detective Marchand's demeanor was "angry and loud." Shannon affies that she asked the Detectives about Defendant Draper's status. *Id.* at p. 2. Shannon asserts the Detectives told Shannon that Draper had an interview with the police and that Draper and his parents fully cooperated, thereby implying that Sean and Shannon were not cooperating. *Id.* According to Shannon, Detective Marchand threatened to arrest Torey if the interview did not go forward. Thereafter, Shannon states, Sean indicated that Torey wanted to cooperate and they agreed to go forward as long as the interview could be stopped at any time. Both Sean and Shannon testified that neither of them had any experience with law enforcement prior to meeting with Detectives on September 24, 2007, when the investigation of Torey first began.

The Detectives' version of the events leading up to Torey's interview contrast the Adamciks' version. Detectives Thomas, Ganske and Marchand all testified that their demeanor while speaking with Sean and Shannon was of a sympathetic nature and that they never became angry, yelled or threatened them. Detective Marchand testified that there was discussion about conducting the interview the following day, but Sean and Shannon did not demand that the interview proceed the next day so that an attorney could be present. All three Detectives

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confirmed that Shannon mentioned she and Sean had spoken with an attorney just before arriving at the police station, but all three detectives also testified that neither Sean nor Shannon ever invoked the right to an attorney before Torey's interview or during Torey's interview, nor did they indicate that they had retained an attorney to represent Torey.<sup>3</sup> Detective Ganske also testified that Shannon was reluctant to go forward with the interview, but that both she and Sean voluntarily agreed to have the interview proceed that night. Detective Thomas reiterated that the Detectives did not become angry, or threaten the Adamciks because they didn't want to provoke any hostility that would prevent the Adamciks from agreeing to go forward with the interview. Detective Thomas stated that "we knew that if we pushed the Adamciks, they would invoke the right to an attorney." Detective Thomas also testified that at the time the Detectives met with the Adamciks, Brian Draper had implicated Torey as the main culprit in Ms. Stoddart's death. Detective Thomas stated that Mr. Draper was in custody, but not under arrest at the time of Torey's interview.<sup>4</sup> All three detectives confirmed that Sean and Shannon did not have an opportunity to speak with Torey before the interview began.

Thereafter, Detectives Thomas and Ganske and Sean, Shannon and Torey all entered the interview room and the videotaped recording of the interview commenced.<sup>5</sup> The Court has reviewed and scrutinized the recording in depth, and finds that transcribing portions of the interview is helpful to its complete analysis.

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<sup>3</sup> The Court notes that the record and testimony presented at Torey's Suppression hearing are conflicted on whether the Adamciks had in fact retained counsel prior to arriving at the police station. Detectives Ganske, Thomas and Marchand testified that the Adamciks had not represented that they had retained counsel. However, at least two of the Detectives indicated that the Adamciks had spent \$300 on an initial consultation with the attorney and Sean stated he had not retained an attorney but just wasted \$300 on bad advice. The Court does not find the issue to be outcome determinative, and therefore, does not make a finding one way or the other.

<sup>4</sup> Detectives Ganske and Thomas testified that they had either seen or were at least aware of the evidence collected at Black Rock in connection to Brian Draper's interview prior to interviewing Torey.

<sup>5</sup> A significant amount of evidence has been introduced regarding the juxtaposition of the Detectives, Torey and his parents in the interview room, with the suggestion being that the Detectives purposely situated Torey at the interview table, with his parents behind him, so as to intimidate Torey. The Court does not find this evidence to be significant one way or the other, as the purpose of the interview was to interview Torey, not his parents, and the Detectives directed their questions accordingly.

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At the onset of the interview, Ganske told Torey that the purpose of the interview was to "clarify some things." Thereafter, Ganske procured a *Miranda* rights waiver form and stated,

"I'm just going to explain this rights waiver form to you and your folks...we kind of talked about it before, but I want you to know now that...I mean...we read your rights so that people understand your rights so you know any time you are interviewed by the police for the most part and you are coming down to the station or the interview room here, people sometimes get the impression they are in custody are not free to leave so, it's a good time to give you your rights so you understand it, you know what your rights are per *Miranda*. Now I am just going to go ahead and read them to you, if you have any questions go ahead and let me know."

After Detective Ganske verbally instructed Torey of his *Miranda* rights, he injected his own explanation of what the rights meant, stating, "you have the right to refuse to answer any questions...if we ask you something you don't like, you are not being forced to answer any questions." Detective Ganske then showed Torey the *Miranda* rights waiver form and stated the following,

"The second part of this is just merely a waiver and the waiver says that I read you the form, I've read you the statement of your rights and I've told you what your rights are...and I desire to make a statement without first consulting an attorney, which I think you have today and without having a lawyer present at this time, which you have your parents here, because you are a juvenile....and this discussion is voluntary on your part."

Detective Ganske then handed Torey the form to sign, which he did.

The Detectives conducted the interview of Torey over the next hour and 20 minutes.

Near the middle of the interview, Shannon left to pick up her other son from a football game. Sean remained in the interview room and Detectives Ganske and Thomas continued questioning Torey. Torey answered all of the Detectives questions in an articulate and coherent fashion, telling the detectives that he and Brian attempted to burglarize some cars and then went to a movie, thereby denying any involvement in Ms. Stoddart's death. Eventually, Detective Ganske related to Torey that the Detectives did not believe the story Torey was telling them and

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informed Torey that they had incriminating evidence against Torey. At this time, Torey requested to have an attorney present. The Detectives ceased their questioning. Sean then asked if he could speak with Torey in a private, unrecorded room. The Detectives allowed this and everyone left the room. The tape continued recording the empty room for the next ten minutes while Torey and Sean met in the private room. Torey and Sean returned to the interview room, with the tape still recording. Detectives Ganske and Thomas returned to the interview room approximately one minute later and the following conversation ensued:

9 4 3  
Detective Thomas: Dad, I think we owe it to you at this point to find out what we know at this point. There's just no easy way to tell you this. We do know that...Torey and, um Brian had gone back into the house, okay, we do know that the two of them murdered, we do know that they murdered Cassie. Okay? We've got the evidence at this point to prove that...We also have some overwhelming evidence...trace evidence, that type of stuff that is going to prove that they did it as well. It's not just hearsay. It's not just somebody saying it. And then we do have a confession from another person giving full disclosure.

Sean: (directed at Torey) So, is that why you want to talk to a lawyer?

Detective Ganske: Here's the deal with you (directing at Sean). What I would like to do is when you want to come back and talk...and I will get you up to speed. (directing at Torey) You know what you need to do. You know exactly what happened. You know what you need to do. So unfortunately, you are not going anywhere tonight. You're going to be placed in custody tonight. Okay? I'm sorry that's the way it goes, but...

Detective Thomas: You are going to be charged with First Degree Murder.

Detective Ganske: Okay? But like I said, before you say anything, I encourage the two of you to talk to an attorney, you should do that. I am not pulling any punches here... still, your full cooperation can do nothing but help you at this point in time.

Sean: Understand that Torey? You know you need to talk to a lawyer...you understand that's the advice they gave you today, okay, and whatever you and the lawyer work out.

Detective Ganske: (facing Torey) We know the details. We got the knife that you used, we got the mask that you used, we've got the videotape. We've got it.

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There's a tape up in there that you buried. Okay? You tried to catch it on fire. All that stuff. You know what I'm talking about, I don't need to tell you that.

Sean: This is right, Torey...

Torey: Yeah.

Sean: What they are saying is true?

Torey: (nodding yes).

Sean: So it sounds like you need a lawyer, what can I say?

Detective Thomas: Dad, don't ask him any more questions, don't ask him any more... We don't want him answering any questions for you.

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Detective Ganske: (facing Torey) I just want you to hear it before your dad that it's not the end of the world, okay? Things can only go up from here. But it's up to you. You can either make it really spiral down, or you can make them go up. Any by going up, you have to come clean with your father, you have to come clean with your mother, and if you get an attorney, you have to come clean with your attorney....then you gotta come to us, and we gotta work together to see what we can do to help you out, and make this better. Okay?

Torey: (nodding, indicating an affirmative response)

Torey: If Brian already confessed, why wasn't he placed in custody?

Detective Ganske: He's in custody. There's two people in custody right now. You, and Brian. Matt's been cleared right now. Cleared by polygraph. Cleared by all the evidence. But we know what happened. Okay? I know this is a shock. Like I said, this is a horrible thing. But you control it, okay? Don't, don't, don't try to play, don't try to play...

Torey: Is this going to show up on the news? And everyone at school is gonna know...

Detective Ganske responds to his question and explains to Sean that they have a search warrant for the Adamcik residence and Torey's car. Then the conversation continues on:

Sean: (directed at Torey) So, based on what you talked to the lawyer about today Torey, do you want a lawyer? You talked to him. You know what he said. If you want a lawyer, you know, that is what you've got to say. I don't know what to say. It doesn't help to tell me.

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Detective Thomas: Well, he's already said he wants an attorney, so as far as we are concerned, we've got to stop, we're out of it...

Then Detective Ganske: That doesn't mean he can't change his mind down the road and come visit us, come back, and we'll say, after he counsels with an attorney, if he really wants to come in, that's cooperation.

Sean: Well, I am sure he wants to cooperate.

Detective Ganske: I know, I know he does. (facing Torey) I know you are going to do the right thing. I know you are a good kid. People make mistakes and things happen. This is...one of those things...it will only get worse, my friend. It'll eat you up. It'll start right heart, (indicating at his heart) and it will eat its way all the way up until it destroys you. I can tell you (pointing upwards) there is only one person watching right now. Okay? Cassie's here, she's watching...she knows. And you know she knows....Okay.

Torey: It all happened so fast.

Detective Ganske: I know, I know. And those are the kind of things that you need to sit down and tell us once you get with your attorney because you really want an attorney, okay? I'd love more than anything to sit down and talk with you right now and try to step through these things and work it out with all of us here, you know? But, I'm kind of stepping into some pretty murky waters when you say you want an attorney and I, I don't want to violate his rights. Or your rights. But we're not mad, Okay? This is a shock, but we know what happened. All you need to do is...its easy for you, things happen fast like you said...

At this point the conversation ends, and Sean, Detective Ganske, and Detective Thomas leave the room and the recording eventually stops. Torey was placed under arrest for First Degree Murder and Conspiracy to Commit First Degree Murder following the interview.

In addition to watching the videotaped interview and listening to the testimony of the Detectives and Sean and Shannon Adamcik, the Court also heard the testimony of Dr. Greg DeClue. Dr. DeClue was called on behalf of Torey as an expert on forensic psychology. Specifically, Dr. DeClue was established as an expert on the psychology of confessions. Having reviewed the videotape of Torey's interview and having conducted a psychological evaluation of Torey and reviewing his school records, Dr. DeClue opined on whether Torey's waiver of his

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*Miranda* rights was voluntarily, intelligently, and knowingly given. Dr. DeClue testified that Torey suffers from Attention Deficit Disorder and also struggles with a learning disability that affects the way Torey reads, writes, and focuses when he is spoken to. Dr. DeClue testified that Torey has been in an adaptive learning program in school. According to Dr. DeClue, Torey is not enrolled in special education classes, but his teachers understand the nature of Torey's learning disabilities and adapt their teaching and review of Torey accordingly. Dr. DeClue testified that Torey has a ninth grade, nine months into ninth grade reading level, but also demonstrated weaknesses in his reading level that could place him as low as a fifth or sixth grade reading level, depending on the circumstances. According to Dr. DeClue, Torey has difficulty reading when time pressures are placed upon him.

Dr. DeClue testified that when Detective Ganske read Torey's *Miranda* rights to him, Ganske read quickly and downplayed the importance of Torey's *Miranda* rights by interjecting misleading statements into the recitation of *Miranda* rights, giving Torey the impression that waiving such rights would have little consequence. In the end, Dr. DeClue opined that there is no indication that Torey understood his rights, but when asked on cross examination, Dr. DeClue stated that he can't say one way or the other whether Torey actually understood his rights or not. Dr. DeClue did testify that in his opinion, Torey's signature on the *Miranda* rights waiver form is not a good indication that Torey understood his *Miranda* rights.

#### ANALYSIS

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**I. EVEN IF SHANNON ADAMCIK INVOKED THE RIGHT TO COUNSEL, SHE AND SEAN ADAMCIK VOLUNTARILTY AGREED TO GO FORWARD WITH THE INTERVIEW BEFORE TOREY WAS QUESTIONED.**

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Torey argues that his mother, Shannon Adamcik, invoked his right to counsel before the interview began, which was disregarded. *Memo. in Support*, p. 18. Torey asserts that Shannon's invocation of Torey's right to counsel was clear and unambiguous. *Id.* However, there is a dispute on whether Shannon actually invoked the right to counsel on behalf of Torey at all. Detectives Marchand, Thomas and Ganske all testified she did not invoke the right to counsel, while she testifies and states in her affidavit that she did invoke the right to counsel. In light of events that transpire immediately after Shannon allegedly invokes the right to counsel, the Court does not find it necessary to weigh the credibility of Sean or Shannon Adamcik against Detectives Thomas, Ganske or Marchand. For present purposes, the Court assumes, *arguendo*, that Shannon did invoke the right to counsel on behalf of Torey.

A minor's parent may invoke the right to counsel for the child, but that request must also be clear and unambiguous. *State v. Doe*, 137 Idaho 519, 525 50 P.3d 1014, 1020 (2002). The Affidavit of Shannon specifically states, "I advised Ganske, Thomas and Marchand that I did not want the interview to go forward unless Torey had an attorney present." *Affidavit of Shannon Adamcik*, p. 2. As Torey represents, this statement by Shannon would be a clear and unambiguous request to have an attorney present before Torey was questioned by the officers. *Memo. in Support*, p. 18. Shannon asserts she then made a subsequent request to have the interview take place the following day when an attorney could be present. *Id.*

When a person who is being subjected to custodial interrogation states that he or she wants an attorney, the interrogation must cease until an attorney is present or the suspect himself reinitiates the conversation. *Edwards v. Arizona*, 451 U.S. 477, 484-85, 101 S.Ct. 1880 (1981);

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*State v. Eby*, 136 Idaho 534, 37 P.3d 625 (Ct.App. 2001). The request must be scrupulously honored. *Miranda v. Arizona*, 384 U.S. 436, 479 86 S.Ct. 1602, 1630 (1966). *See also, Michigan v. Mosely*, 423 U.S. 96, 96 S.Ct. 321 (1975). Absent an interrogation there is no infringement of Defendant's Fifth Amendment right to counsel. *See Edwards*, 451 U.S. at 486. Therefore, to determine whether Shannon's alleged request was scrupulously honored, the Court must discern what the Detectives did after the alleged request for an attorney that would be in violation of Torey's Constitutional rights, including whether the Detectives engaged in further conduct amounting to interrogation before obtaining the waiver, whether the Detectives engaged in tactics tending to force the Adamciks into changing their mind, and whether the waiver was knowing and voluntary.

The Adamciks assert that the conduct and demeanor of Detectives Marchand, Ganske and Thomas was coercive and intimidating, thereby leaving the Adamciks with the impression that Torey would be taken into custody if they didn't go forward with the interview. In response to the threat of Torey's detention, Sean asserts, he indicated to the Detectives that Torey wanted to cooperate. The Detectives contend, however, that while they did want the interview to go forward, their demeanor was one of sympathy, as they did not want to create a hostile or tense relationship with the Adamciks.

Even if the Detectives' alleged impatience with Sean and Shannon escalated into a frustrated or heated state, and the threat of their son's detention provoked Sean and Shannon into agreeing to go forward with the interview, the Court does not find either tactic to be one that would overbear their ability to voluntarily agree to allow the Detectives to question Torey without the presence of an attorney. Moreover, and of further importance, the Detectives did not engage in anything that would amount to an interrogation of Torey between the time that

Shannon states she invoked the right to counsel and the time the Adamciks agreed to go forward with the interview. In fact, Torey was outside the room.

The Court does not make a distinction between Shannon Adamcik's conduct and Sean Adamcik's conduct. Both parents conversed with law enforcement in representation of their son, and whether one parent invoked the right to counsel and the other parent agreed to cooperate is insignificant. Once Sean agreed to cooperate, Shannon did not object. In fact, in her Affidavit she states that "they," meaning Sean and Shannon, did not want Torey to be detained so Sean agreed to cooperate. The Court infers from Shannon's conduct, or lack of objection, and her own statements that she agreed to go forward with the interview under the condition that they would be free to leave and they could stop the interview at any time, that both Sean and Shannon agreed to go forward with the interview.

Although the Court finds that Sean and Shannon voluntarily agreed to conduct the interview by telling the detectives that Torey wanted to cooperate with the investigation, the Court does not find Sean and Shannon Adamciks' actions in resuming the interview to be determinant of whether Torey's Constitutional rights were violated. As the Court explains below, the Court finds Torey to be capable of understanding the proceedings and his *Miranda* rights. Thus, even if Shannon invoked the right to counsel, and even if Sean and Shannon agreed to go forward with the interview under the threat of Torey's possible detention, the Detectives did not begin questioning Torey until they had an opportunity to advise Torey of *his* rights. Even more telling is that once Torey was read his rights and handed the *Miranda* rights waiver form, neither Sean nor Shannon invoked any of Torey's rights on his behalf. Additionally, neither Sean nor Shannon interjected to ensure that Torey understood his rights or the consequences of

waiving them.<sup>6</sup> Thus, the Court must next consider whether Torey was in custody for interrogation purposes, whether Torey was competent to understand his Constitutional rights, and whether the Detectives' conduct during the interview amounts to coercion or duress, which would thereby negate the voluntariness of Torey's confession.

## II. TOREY ADAMCIK WAS IN CUSTODY AT THE TIME OF THE INTERVIEW

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Torey argues that he was in custody, i.e.— not free to leave, at the time of his confession. *Memo. in Support.* p. 16. Torey asserts that he was in custody because the officers told the Adamciks that the interview could not be rescheduled and if Torey did not agree to do the interview, he would be arrested. *Id.* at p. 17. The custodial nature of the interview, Torey argues, is further enhanced by the way he was “whisked” into the interview room and seated by the officers, rather than his parents. Torey contends that due to the nature of the interview, he was not free to leave. *Id.* Furthermore, Torey argues, the Detectives would not have given him *Miranda* warnings if he was not in custody. *Id.* Torey asserts that Detective Ganske's ambiguous statement regarding whether he was free to leave does not clearly make known that he was in fact free to leave. *Id.*

The objective test for determining whether an adult was in custody for purposes of *Miranda* also applies also to juvenile interrogations, but courts should consider the additional elements that bear upon a child's perceptions and vulnerability, including the child's age, maturity and experience with law enforcement and the presence of a parent or other supportive adult. *State v. Doe* 130 Idaho 811 948 P.2d 166 (1997). In *Stansbury v. California*, 511 U.S. 318, 114 S.Ct. 1526 (1994), the Supreme Court explained that “the initial determination of

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<sup>6</sup> There was testimony at the suppression hearing that showed neither Sean nor Shannon were given a copy of the *Miranda* rights waiver form as the *Miranda* warnings were being read to Torey. However, the Court does not find this fact to be significant. Both parents were present when Torey's rights were read and could have, at any time, requested to read the *Miranda* form or asked to have the rights further explained.

custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned.” *Id.* at 323, 114 S.Ct. at 1529. The Court determined that “a police officer's subjective view that the individual under questioning is a suspect, if undisclosed, does not bear upon the question of whether the individual is in custody for purposes of *Miranda*.” *Id.* at 324, 114 S.Ct. at 1529-30. The weight and pertinence of any communications regarding the officer's degree of suspicion will depend upon the facts and circumstances of the particular case. *Id.* at 324-326, 114 S.Ct. at 1530.

To ascertain whether an individual was in custody, a court must consider all of the circumstances surrounding the interrogation, with the ultimate inquiry being “whether there [was] a ‘formal arrest or restraint on freedom of movement’ of the degree associated with a formal arrest.” *California v. Beheler*, 463 U.S. 1121, 1125, 103 S.Ct. 3517, 3520, (1983). *See also State v. Medrano*, 123 Idaho 114, 844 P.2d 1364 (Ct.App.1992). The relevant inquiry is how a reasonable person in the suspect's position would have understood his situation. *Berkemer v. McCarty*, 468 U.S. 420, 442, 104 S.Ct. 3138, 3151-3152 (1984). This inquiry should focus on such elements as the time and location of the interrogation, the conduct of the officers, the nature and manner of the questioning, and other persons present. *Medrano*, 123 Idaho at 118, 844 P.2d at 1368.

Therefore, this Court must look to all the circumstances surrounding Torey's interview to determine whether he was in custody or not, and also consider additional factors such as Torey's age, maturity and experience with law enforcement and the presence of his parents. In viewing the interview under the standard set forth in *Stansbury*, the Court must consider the objective circumstances of the interrogation. In this case, officer Ganske spoke directly to the issue, albeit quite ambiguously:

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“any time you are interviewed by the police for the most part and you’re coming down to the station or the interview room here, people sometimes get the impression maybe they are in custody are not free to leave so, it’s a good time to give you your rights so you understand it, you know what your rights are per *Miranda*.”

Ganske did not specifically tell Torey that he was in custody, only that other people in the same setting would believe that they are in custody. The Court finds this to be a very confusing statement, and Torey would have no way of knowing whether he was free to leave or not. In addition, because Torey is a juvenile, and because of the seriousness of the crime he was being interrogated for, coupled with the number of Detectives involved with the interview and the setting Torey was placed in, the Court concludes that an objective person in a similar situation would not likely have believed that he or she was free to leave. In part, even Detective Ganske’s statement reflects the fact that he considered Torey to be in custody, because he mentions the issue of whether Torey or someone similarly situated would feel free to leave, and then acknowledges that it would be a good time to give Torey his *Miranda* warnings. Thus, for the purpose of determining whether Torey’s confession was voluntarily given, the Court finds Torey was in custody.

### **III. TOREY VOLUNTARILY WAIVED HIS MIRANDA RIGHTS**

The determination of whether a juvenile has voluntarily waived his *Miranda* rights requires an inquiry into the totality of all circumstances surrounding the interrogation, including “the juvenile’s age, experience, education, background, and intelligence, and into whether he had the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.” *Fare v. Michael C.*, 442 U.S. 707, 725, 99 S.Ct. 2560 (1979); *State v. Doe*, 130 Idaho at 811, 817 948 P.2d 167, 172 (1997) (hereafter, “Doe I”). The state bears the burden of demonstrating that an individual has voluntarily, intelligently and

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knowingly waived his rights by a preponderance of the evidence. *State v. Alger*, 115 Idaho 42, 46, 764 P.2d 119, 123 (Ct. App. 1988).

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The trial court in *State v. Doe*, 131 Idaho 709, 963 P.2d 392 (1998) (hereafter, "Doe II") identified and considered the following factual circumstances as relevant to the determination of the validity of the juvenile Doe's *Miranda* waiver: (1) Doe could only read and write at a fourth grade level but had an eighth grade education; (2) the court's observation that Doe demonstrated a lack of sophistication and a low level of intelligence; (3) the officer involved in Doe's interview never told Doe that he would be arrested if he refused to speak with him; and (4) the officer's testimony that Doe was informed of his rights and said that he understood them before signing a waiver and agreeing to speak with the officer. *Id.* at 713. In addition, the court noted that neither Doe's ADD diagnosis nor his placement on medication to relieve the symptoms of ADD were material. *Id.* This determination was premised on Doe's testimony that ADD had little effect on him and that he had voluntarily stopped taking his medication years before, with few consequences. *Id.* The trial court also considered the written acknowledgment of *Miranda* rights and waiver form signed by Doe and Doe's testimony at the hearing that he could both read and understand the words on the form. *Id.* For these reasons, the trial court determined that Doe executed a knowing, voluntary and intelligent waiver of his rights. *Id.*

On appeal in Doe II, the Idaho Supreme Court stated that in evaluating the voluntariness of a juvenile's confession, consideration must be given to "the child's age, maturity, intelligence, education, experience with police and access to a parent or other supportive adult." *Id.*, Citing, Doe I, 130 Idaho at 817, 948 P.2d at 172. Some additional factors in the voluntariness determination include whether *Miranda* warnings were given, the length of the detention, the repeated and prolonged nature of the questioning, and deprivation of food or sleep. *State v. Troy*,

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124 Idaho 211, 214, 858 P.2d 750, 753 (1993). In Doe II, the defendant was just a few months away from his eighteenth birthday at the time of questioning. The Supreme Court noted he was given his *Miranda* warnings and not subjected to extensive questioning or a lengthy detention. In addition, the court found that although Doe's father was not present during the interview, Doe was not precluded from having his father present by the officer involved in the questioning. *Id.* Thus, the court held, Doe's waiver of his *Miranda* rights was given knowingly, intelligently and voluntarily. *Id.*

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An express written waiver of *Miranda* rights is strong proof of a voluntary waiver but is not conclusive proof. *State v. Doe*, 137 Idaho 519, 523 50 P.3d 1014, 1018 (2002) (hereafter, "Doe III"). In Doe III, the detective who conducted the interview with the juvenile downplayed the importance of the *Miranda* warnings, stating that before he can speak with Doe, Doe needed to "read ... this little piece of paper" (referring to the written *Miranda* rights). *Id.* The Detective also told Doe, "You're going to have to answer some questions. Because we're going to have to ask you a few things about what happened, what was there, okay? If you want to talk to me, I just need to have you sign right there." *Id.* at 524. Doe replied "okay" and signed the waiver form. *Id.* The court found that even though the detective did state that the *Miranda* warnings are just a "little sheet of paper," and "You're going to have to answer some questions," the detective carefully recited the warnings to Doe, and Doe stated he knew what the warnings were, and that they have been read to him earlier that day. Moreover, the court determined, from reviewing a recording of the interview, that even though the interview occurred at 3:40 a.m. and Doe had been awake since 9:00 a.m. the previous day and told the Detectives he was tired, Doe was alert and articulate. *Id.* The court considered the fact that Doe was read his *Miranda* rights to him

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earlier in the day of his interview, and determined that while Doe was young, at age 12, he knew what the *Miranda* rights were and understood what they meant. *Id.*

Torey argues that although his *Miranda* warnings were given to him, his waiver of these rights was not voluntary. Torey argues that due to his age, experience, lack of food or sleep, the fact that he suffers from Attention Deficit Disorder and a learning disability, he could not have knowingly, intelligently and voluntarily waived his *Miranda* rights. The Court addresses each factor, in turn.

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The Court stresses that Torey's age and his ADD diagnosis and the learning disability that Torey suffers from are critical factors in the Court's analysis and the Court is mindful of how each may have affected Torey's ability to knowingly, voluntarily and intelligently waive his *Miranda* rights. Torey asserts that Detective Ganske was downplaying the importance of the *Miranda* rights by making the ambiguous statement about whether Torey was free to leave or not before reading Torey his *Miranda* rights. Dr. DeClue testified that by inserting his own explanations and comments into the reading of the *Miranda* rights, Detective Ganske created confusion and misled Torey. Dr. DeClue also testified that Torey is of average intelligence, but that his reading comprehension and listening comprehension are compromised if Torey is forced to do so quickly. Ultimately, Dr. DeClue testified that he could not say whether Torey understood his rights or not.

As the court in Doe III held, an express written waiver of *Miranda* rights is strong proof of a voluntary waiver but is not conclusive proof. Because signing the form is not conclusive proof, and there is not definitive evidence tending to show that Torey understood his *Miranda* rights as they were being read to him, the Court relies on its own evaluation of Torey from the recording of the interview, coupled with the fact that Torey did sign the form, all the while

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taking into consideration Dr. DeClue's testimony that Torey has trouble understanding something if it is read to him quickly or he is compelled to read something quickly.

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The Court finds that throughout the interview, Torey was able to articulately express himself and answer the Detectives' questions with responsive and coherent statements. There was nothing to suggest that Torey needed the conversation to move more slowly than it did for him to respond. Torey gave sound, reasoned answers to the Detectives questions and maintained a consistent equanimity throughout the interview. In fact, Torey's deportment is virtually unwavering. The Court finds that an objective observer of Torey's steadfast demeanor would have difficulty believing that Torey was being questioned for murder. Additionally, the Court has reviewed a written statement Torey gave Detectives on September 24, 2006, in which Torey was able to soundly and lucidly express himself in written form.

Similar to the statement in Doe III where the officers said that the defendant was "going to have to answer some questions," Detective Ganske stated that the purpose of the interview was "just to clarify some things," and that it was "merely a waiver." These statements may have suggested to Torey that reviewing the *Miranda* rights was a mere formality. However, unlike the situation in Doe III, where the officers stated the defendant was going to have to "sign a little piece of paper," Detective Ganske in the instant case stated, "it's a good time to give you your rights so you understand it and you know what your rights are per *Miranda*," and "you have the right to refuse to answer any questions...if we ask you something you don't like, you're not being forced to answer any questions." Although Detective Ganske did downplay the importance of the form by stating "it's merely a waiver," the Court finds that when taking into consideration all of the statements that Detective Ganske made to Torey, and the fact that he repeatedly told Torey he had the right to an attorney and didn't have to answer any questions

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without an attorney present, Detective Ganske's presentation of Torey's rights did not tarnish the purpose and overall importance Torey's *Miranda* warnings.

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Torey's case also differs from Doe III because, the defendant in Doe III was twelve years of age, while Torey was 16 at the time of the interview. Moreover, the defendant in Doe III did not have a parent in the interview room with him, but Torey did. While the Defendant in Doe III had prior experience with law enforcement because he was read his *Miranda* rights earlier that day, he was also interviewed at 3:40 a.m., after being awake since 9:00 a.m. the previous day and told the detective he was tired. Thus, the Court finds that if a tired twelve-year old, without a parent present, was capable of understanding the importance of his rights when law enforcement downplayed the importance of the defendant's rights even more so than Detective Ganske did with Torey, even while considering Torey's cognitive disabilities, then the Court concludes that Torey was just as capable, if not more than the Defendant in Doe III of understanding his *Miranda* rights.

Although Torey was slightly younger than the defendant in Doe II the time of their respective confessions, Torey's maturity, intelligence, and education strike the Court as being at a higher level than the Defendant in Doe II. Like the defendant in Doe II, Torey does suffer from ADD, and has a learning disability. However, the defendant in Doe II had an eighth grade education and read at a fourth grade level. Torey has a tenth grade education, and reads a level of between sixth and tenth grades, according to the testimony of Dr. DeClue. Although Dr. DeClue testified that Torey's learning conditions affect Torey's listening and reading comprehension, the Court does not deem these conditions to be more inhibiting than the conditions and mental capacity of the defendant in Doe II.

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Another issue raised at the suppression hearing was the level of prior experience with law enforcement that Torey, Sean and Shannon had. Both Sean and Shannon indicate that they had no prior interaction with law enforcement, and that their only familiarity with *Miranda* was derived from television shows. They also testified that to their knowledge, Torey had no prior involvement with law enforcement, other than when he was first questioned by Detectives the evening of September 24, 2006, and a minor incident when he was in seventh grade.

Accordingly, the Court concludes that all of the Adamciks' degree of experience or sophistication when dealing with law enforcement was minimal, at best. However, because this Motion involves a totality of the circumstances test, the Court takes all the circumstances of the interview into account, and finds that Torey's lack of prior experience with law enforcement is not dispositive.

Torey also addressed his possible deprivation of food or sleep. Although there was no evidence from the State regarding deprivation of food or sleep, the testimony of Shannon is that Torey did not eat breakfast the morning of the interview. However, Shannon's testimony also is that Torey was on his own recognizance for most of the morning, at which time he could have eaten something. In addition, there was no evidence presented on whether Torey was denied sleep the night before the interview. The Court further notes that the interview occurred at around 7 p.m. and that Torey appeared alert and capable of responding to any questions that were asked of him. The Court also identified that Torey did not appear to be overly nervous or anxious and there is nothing to indicate drowsiness, fatigue or deprivation of food that affected his responses to the questioning. Moreover, in *Doe III*, the twelve-year old defendant was interviewed at 3:40 a.m., and even though the defendant told the detectives he was tired, the court determined that the

defendant sounded alert and answered all questions articulately, and ultimately found the defendant voluntarily, intelligently and knowingly waived his *Miranda* rights.

With respect to the issue of length of detention, the Court finds it to be not applicable to this case. Torey was not detained prior to signing the *Miranda* waiver form, and the interview lasted only an hour and 20 minutes.

Finally, the Court observes that Torey eventually did invoke his right to counsel. This further indicates to the Court that Torey understood his right to have counsel present during the interview. There is no better evidence that a defendant understands his right to have counsel present than when the defendant demonstrates an outright exercise in requesting that those rights be honored. Torey did so in this case and exemplified to the Court that he knew and understood the importance of his rights per *Miranda*.

**IV. AFTER TOREY INVOKED HIS RIGHT TO AN ATTORNEY, HIS STATEMENTS ARE SUPPRESSED IN PART, AND ADMISSIBLE, IN PART.**

It is clear from viewing the interview that Torey did eventually invoke his right to have counsel present. Torey creates no doubt of his desire when he states, "Can I have an attorney?" It is the conversation subsequent to this invocation that approaches every boundary, and ultimately oversteps the boundaries, imposed upon law enforcement once a person in custody invokes the right to counsel. Torey asserts that his invocation of the right to counsel was not honored because the Detectives' statements constitute the functional equivalent of an interrogation. The State contends that the Detectives comments were merely a presentation of the evidence that were not designed to elicit a response.

The rule regarding the right to counsel, although seemingly straightforward, has instigated a myriad of litigation since the inception of *Miranda*. The rule, as it stands now, holds

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that once the right to counsel is invoked, that right must be scrupulously honored and all questioning must be ceased. *Miranda v. Arizona*, 384 U.S. 436, 479 86 S.Ct. 1602, 1630 (1966). See, *State v. Bagshaw*, 141 Idaho 257, 108 P.3d 404 (Ct.App. 2004); *Edwards v. Arizona*, 451 U.S. 477, 482, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981); *Michigan v. Mosley*, 423 U.S. 96, 103, 96 S.Ct. 321, 326 (1975). Continuation of the interrogation without any attorney present, however, does not automatically render any statement obtained inadmissible. See, *Miranda*, 384 U.S. at 475, 86 S.Ct., 1602. Once a person in police custody invokes his or her *Miranda* rights, the issue is whether the individual was interrogated in violation of the individual's undisputed right under *Miranda* to remain silent until the individual has consulted with a lawyer. *Id. Citing, Rhode Island v. Innis*, 446 U.S. 291, 298 100 S.Ct. 1682, 1689 (1980). As the court in *Bagshaw* recognized, the interrogation "must reflect a measure of compulsion above and beyond that inherent in custody itself." *Bagshaw*, 141 Idaho 257 at 261. *Citing, Innis*, 446 U.S. at 300, 100 S.Ct. 1682. "Interrogation" refers to express questioning but also to any words or actions on the part of law enforcement that are reasonably likely to elicit an incriminating response, and the law enforcement has reasonable knowledge that it would elicit an incriminating response. *Id.*

An interrogation includes not only express questioning but also its "functional equivalent." *State v. Salato*, 137 Idaho 260, 267, 47 P.3d 763, 770 (Ct.App. 2001). *Citing, Rhode Island v. Innis*, 446 U.S. 291, 300, 100 S.Ct. 1682, 1689, (1980). The functional equivalent of interrogation includes "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response." *Id.* at 301, 100 S.Ct. at 1689-90. The test is an objective foreseeability test to determine whether questioning constitutes interrogation. See, *United States*

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v. *LaPierre*, 998 F.2d 1460, 1466-67 (9th Cir.1993). Police are not held accountable for the unforeseeable results of their words or actions. *Innis*, 446 U.S. at 301-02, 100 S.Ct. at 1689-90.

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The Ninth Circuit has carefully examined the issue of whether informing a suspect of evidence the law enforcement has gathered against the suspect amounts to an interrogation in *U.S. v. Hsu*, 852 F.2d 407 (9th Cir. 1988). The court found that a line had to be drawn between psychological pressures placed on the suspect after the right to an attorney was invoked and “objective, undistorted presentation(s)” by law enforcement of the evidence against a suspect. The court found the latter to be “less constitutionally suspect because the risk of coercion is lessened when information is not directly elicited.” *Id.* at p. 411. Citing, *United States v. Pheaster*, 544 F.2d 353, 368 (9th Cir. 1976); (stressing the “key distinction is between questioning the suspect and presenting the evidence available against him”). The court in *Hsu* noted that presentations of evidence against a suspect are not always free from coercion, however, where the court held that a suspect's right to cut off questioning was not scrupulously honored, when law enforcement told the suspect “that prison was a ‘dark place,’ where they ‘pumped air’ to the prisoners.” Citing, *United States v. Olof*, 527 F.2d 752 (9th Cir. 1975) The court in *Hsu* held that recitations of evidence against a suspect tend to be less coercive, and that courts, in conducting factual inquiries into whether law enforcement acted with due respect for a suspect’s rights, “may properly take account of the actual tactics employed in eliciting information.” *Hsu*, 852 F.2d at 411.

The Court finds it compelling that the U.S. Supreme Court in *Arizona v. Roberson*, 486 U.S. 675, 108 S.Ct. 2093 (1988), has addressed the issue, albeit in a somewhat different setting. The Court held that once a suspect invokes his *Miranda* rights in an investigation of one crime, the police may not interrogate him regarding another crime until counsel has been provided, but

law enforcement is "free to inform the suspect of the facts of the second investigation as long as such communication does not constitute interrogation." *Id.* at 687, 108 S.Ct. at 2101. If providing such information does not constitute an interrogation or functional equivalent thereof in the circumstances of two investigations, there is no reason to believe the rule would be any different when a suspect is the subject of only one investigation. *United States v. Payne*, 954 F.2d 199, 203 (4th Cir.1992).

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The Idaho Court of Appeals was presented with a similar situation to the one at hand in *State v. Person*, 140 Idaho 934, 104 P.3d 976 (Ct.App. 2004). The issue in that case was whether, by re-entering the room, reading the arrest warrant, and telling the defendant "that now is the time to talk," the detective effectively re-initiated the interrogation and violated the defendant's *Miranda* rights, thereby failing to honor the defendant's invocation of his right to an attorney. *Person*, 140 Idaho 934, 940 104 P.3d 976, 982. The district court in *Person* held that the police had not re-initiated interrogation but had appropriately contacted the defendant to inform him of the charge that he faced. *Id.* The district court concluded, because of the seriousness of the crime (murder) and an uncertainty about whether the warrant had been read at the time of arrest, that the reading of the warrant was a circumstance "ordinarily attendant" to the arrest and detention. *Id.* Accordingly, the district court concluded that the reading of the warrant could not be considered the type of statement intended to elicit an incriminating response. *Id.* The Idaho Court of Appeals upheld this decision, noting that "Idaho law requires that at or near the time of an arrest the accused be advised of the arrest, the reason for it, and the authority to make it." *Id. Citing*, I.C. §§ 19-608, -609; I.C.R. 4. Referring to the Court of Appeals' decision in *State v. Salato*, 137 Idaho 260, 47 P.3d 763 (Ct.App. 2001), the Court of Appeals in *Person* reasoned,

“while the statement may have ‘struck a responsive chord’ in the defendant, such did not rise to the level of a functional equivalent of an interrogation.... As in *Salato*, the detective in the instant matter was not being deceptive, and although the reading of the arrest warrant clearly struck a responsive chord in Person, that reading was well within the parameters of a statement normally attendant to arrest and custody under *Innis* and *Salato*. The reading of the arrest warrant in this case was not objectively likely to elicit an incriminating response.”

*Person*, 140 Idaho 934, 941 104 P.3d 976, 983.

The situation in *Salato* is also similar to the present one. The defendant in *Salato* was one of three men taken into custody who were suspected of committing a robbery. *Salato*, 137 Idaho at 268, 47 P.3d at 771. *Salato* initially waived his right to counsel and then later invoked the right to counsel. *Id.* The interview was properly terminated, but one of the detectives entered the interview room where *Salato* was and told him he would be taken to jail as soon as the other suspects were done writing their confessions. *Id.* On appeal, *Salato* argued that the detective’s statement was reasonably likely to elicit an incriminating response and was the functional equivalent of interrogation. *Id.* Relying on *Innis*, the Idaho Court of Appeals held that the detective’s statement did not objectively call for nor solicit an incriminating response. *Salato*, 137 Idaho at 268, 47 P.3d at 771. The court stated, “*Innis* excludes from the definition of interrogation words or actions “normally attendant to arrest and custody.” *Id.* Citing, *Innis*, at 301, 100 S.Ct. at 1689-90. The court in *Salato* found it important to note that the detective was not lying to *Salato* when he informed him of the reason for his delayed transportation to the jail. *Salato*, 137 Idaho at 268, 47 P.3d at 771. The court determined that while the detective’s statements may have “struck a responsive chord” in *Salato*, being informed that the other two defendants had confessed was not the functional equivalent of interrogation. *Id.* Citing, *Innis*, 446 U.S. at 303, 100 S.Ct. at 1690-91. *See also*, *United States v. Moreno-Flores*, 33 F.3d 1164 (9th Cir. 1994).

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The Idaho Court of Appeals in *Person* and *Salato* and the Ninth Circuit in *Hsu*, *Olof*, and *Pheaster* all hold that an explanation of the evidence and charges facing the defendant do not rise to the level of an interrogation, if there is not an underlying tactic of psychological pressure placed upon the suspect. *See, also, U.S. v. Conley*, 156 F.3d 78 (1st Cir. 1998) (A law enforcement officer's mere description of the evidence and of potential charges against a suspect cannot be classified as interrogatory); *United States v. Payne*, 954 F.2d 199, 203 (4th Cir.1992) (Statements by law enforcement official to suspect regarding nature of evidence against suspect do not constitute interrogation as matter of law; whether descriptions of incriminating evidence constitute functional equivalent of interrogation depends on totality of the circumstances).; *United States v. Jackson*, 863 F.2d 1168, 1172 (4th Cir.1989) (The law enforcement's statement did not constitute the functional equivalent of interrogation because there was no evidence that the agent "knew or should have known" that his statement would result in an incriminating response from the defendant); *United States v. Crisco*, 725 F.2d 1228, 1232 (9th Cir. 1984); (officer's post-arrest statement to defendant about undercover officer previously showing defendant \$60,000 with which he was to purchase cocaine was intended to inform defendant of circumstances and not to elicit incriminating response), *cert. denied*, 466 U.S. 977, 104 S.Ct; *U.S. v. Brown*, 221 F.3d 1349 (9th Cir. 2000) (Merely informing a suspect of the evidence against him does not constitute interrogation), *United States v. Allen*, 247 F.3d 741, 765-66 (8th Cir. 2001) (keeping a suspect informed of the progress of the investigation and status of charges against him should be encouraged so long as the communication is truthful and not designed or likely to elicit an incriminating response).

In the present case, Detectives Ganske and Thomas initially adhered to Torey's request for an attorney. They ceased all questioning and let Torey and Sean speak to one another in a

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private, unrecorded room. Because there were several statements made by the Detectives, Sean and Torey after Sean and Torey reentered the interview room, the Court finds it necessary to analyze, in sequence, two sets of statements and responses. The first set of statements made upon reentering the interview room, but after Torey invoked the right to counsel is as follows,

Detective Ganske: Dad, I think we owe it to you at this point to find out what we know at this point. There's just no easy way to tell you this. We do know that...Torey and, um Brian had gone back into the house, okay, we do know that the two of them murdered, we do know that they murdered Cassie. Okay? We've got the evidence at this point to prove that... We also have some overwhelming evidence...trace evidence, that type of stuff that is going to prove that they did it as well. It's not just hearsay. It's not just somebody saying it. And then we do have a confession from another person giving full disclosure.

Sean: So is that why you want a lawyer?

Detective Ganske: (directed at Sean) Here's the deal with you. What I would like to do is when you want to come back and talk to you and I will get you up to speed.

Detective Ganske: (directed at Torey) You know what you need to do. You know exactly what happened. You know what you need to do. So unfortunately, you are not going anywhere tonight. You're going to be placed in custody tonight. Okay? I'm sorry that's the way it goes, but...

Detective Thomas: You are going to be charged with First Degree Murder.

Detective Ganske: Okay? But like I said, before you say anything, I encourage the two of you to talk to an attorney, you should do that. I am not pulling any punches here, still, your full cooperation can do nothing but help you at this point in time.

Sean: Understand that Torey? You know you need a lawyer...you understand that's the advice they gave you today, okay, and whatever you and the lawyer work out.

Detective Ganske: (facing Torey) We know the details. We got the knife that you used, we got the mask that you used, we've got the videotape. We've got it. There's a tape up in there that you buried. Okay? You tried to catch it on fire. All that stuff. You know what I'm talking about, I don't need to tell you that.

Sean: This is right, Torey...

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Torey: Yeah.

Sean: What they are saying is true?

Torey: (nodding yes).

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From this conversation, the Court must determine whether Detective Ganske's statements were designed to elicit a response or invite comment from Torey, i.e.—whether they were the functional equivalent of an interrogation. The Court finds of particular importance the fact that Detective Ganske began the conversation by directing his attention at Sean and stating that they needed to explain some things to Sean. In doing so, the Court does not find that the Detectives were trying to elicit an incriminating response from Torey. At that point in the conversation Sean had no reason to believe that his son would be charged with first degree murder, so an explanation of why Torey was being accused of such a grave crime was certainly appropriate.

The Court also finds that once the Detectives' attention is turned to Torey, the line of statements falls within the perimeters of what would constitute a recitation of evidence that the Detectives had gathered against Torey rather than an interrogational line of questioning. Detective Ganske straightforwardly states, "We got the knife that you used, we got the mask that you used, we've got the videotape. We've got it." As the court in *United States v. Hsu* distinguished, this statement is an "objective, undistorted presentation" of evidence against Torey, rather than the type of statement that is designed to place psychological pressures on Torey and compel him to confess.

The statement of Detective Ganske, "(y)ou know what you need to do" and Detective Thomas's statements regarding the evidence they had on Torey, albeit coated with a layer of precariousness, do not rise to the level in which an objective observer would conclude were designed to invite comment from Torey. An objective observer in the interview room, hearing

the statement “(y)ou know what you need to do,” would likely conclude that the statement was made in hopes that Torey would at some time have a change of heart and confess to his involvement in Ms. Stoddart’s death, however, it is not apparent whether Detective Ganske was telling Torey he needed to do something at that moment or at some later time, with his lawyer, for instance. This is clarified in Detective Ganske’s following statement in which he encourages Torey to talk to a lawyer before he states anything.

The Detectives did not lie to Torey and Sean. The nature of the statements are not in a form of a question and are not, at their essence, proposed to invite comment from Torey. The Court finds this is a similar situation to *Person*, where the police officers explained why Person was being arrested by reading the arrest warrant to Person. Here, the Detectives informed Sean and Torey of the nature of the charges by explaining the evidence they had collected, thereby striking a “responsive chord” in Sean. Like *Person*, the statements were not objectively likely to elicit an incriminating response in Torey, much less Sean. Given the seriousness of the crime in this case, and state of disbelief that Sean undoubtedly had to be under in this situation, the Court finds that the explanation of Detectives Ganske and Thomas of what they believed Torey had done were well “within the parameters of a statement normally attendant to arrest.” *See, Salato*, 137 Idaho at 268, 47 P.3d at 771. Accordingly, the Detectives’ statements regarding the evidence they had gathered was not tantamount to an interrogation.

Due to ample holdings from other courts finding a distinction between the objective presentation of evidence and coercive statements regarding the evidence that are designed to elicit a response, the Court determines that such a distinction must lie in Torey’s case. The objective recitation of the evidence, i.e.—“We’ve got the knife, we’ve got the mask, we’ve got the videotape,” did not amount to an interrogation, nor its functional equivalent, and it were not



designed to elicit a response. In fact, the statements did not elicit any response from Torey. Torey remained silent. Sean, however, did not. Sean states, "What they are saying is true..." To which Torey gives an affirmative response. The Court finds that Sean volunteered this statement in response to the Detectives' statements explaining why the Detectives were arresting Torey and charging him with first degree murder. As the Court in *Innis* held, since the Detectives cannot be held accountable for the unforeseeable results of their words or actions, and the definition of interrogation can extend only to words or actions on the part of the Detectives that they should have known were reasonably likely to elicit an incriminating response. The test is an objective foreseeability test and the Court does not find an objective observer would foresee that the Detectives' statements would elicit a response. The Detectives' statements are not even directed at Sean, and they are not framed to extract any comment, statement or response from Torey.

Moreover, Sean Adamcik is not an officer of the state that would be held accountable for asking Torey a question that would elicit an incriminating response, nor was he moved or coerced in any way by the Detectives to ask this question of Torey. Even if the Court did find that the Detectives' statements explaining the nature of the charge to Torey were designed to elicit a response from Torey, they certainly were not designed to elicit a response from Sean. Detectives Ganske and Thomas were facing Torey and speaking directly to Torey when they made the statements. Accordingly, Torey's affirmative response, or nodding to Sean's statement, "(w)hat they are saying is true..." is admissible.

Thereafter, the conversation proceeds as follows, and serves as the second set of statements the Court analyzes:

Detective Thomas: Dad, don't ask him any more questions, don't ask him any more... We don't want him answering any questions for you.

Detective Ganske: (facing Torey) I just want you to hear it before your dad that its not the end of the world, okay? Things can only go up from here. But it's up to you. You can either make it really spiral down, or you can make them go up. Any by going up, you have to come clean with your father, you have to come clean with your mother, and if you get an attorney, you have to come clean with your attorney....then you gotta come to us, and we gotta work together to see what we can do to help you out, and make this better. Okay?

Torey: (nodding, indicating an affirmative response)

Torey: If Brian already confessed, why wasn't he placed in custody?

Detective Ganske: He's in custody. There's two people in custody right now. You, and Brian. Matt's been cleared right now. Cleared by polygraph. Cleared by all the evidence. But we know what happened. Okay? I know this is a shot. Like I said, this is a horrible thing. But you control it, okay? Don't, don't, don't try to play, don't try to play...

Torey: Is this going to show up on the news? And everyone at school is gonna know.

Detective Ganske responds to his question and explains to Sean that they have a search warrant for the Adamcik residence and Torey's car. Then the conversation continues on:

Sean: (directed at Torey) So, based on what you talked to the lawyer about today Torey, do you want a lawyer? You talked to him. You know what he said. If you want a lawyer, you know, that is what you've got to say. I don't know what to say. It doesn't help to tell me.

Detective Thomas: Well, he's already said he wants an attorney, so as far as we are concerned, we've got to stop, we're out of it...

Then Detective Ganske: That doesn't mean he can't change his mind down the road and come visit us, come back, and we'll say, after he counsels with an attorney, if he really wants to come in, that's cooperation.

Sean: Well, I am sure he wants to cooperate.

Ganske: I know, I know he does. (facing Torey) I know you are going to do the right thing. I know you are a good kid. People make mistakes and things happen.

Again, the Court finds that the above conversation falls within the parameters of an explanation, rather than interrogation. However, the statements made by the Detectives are not innocuous. Even though the conversation and statements framed by the Detectives never form a question or seek to elicit any information from Torey, the relationship and trust building tactics that the Detectives use exceed the margins of permissible statements a Detective can properly make after a suspect, especially a juvenile suspect, has invoked the right to counsel. Detective Ganske tells Torey it is “not the end of the world” and that “things can only go up from here” and that he should “come clean” with his parents and an attorney. At this point in the conversation, Detective Ganske plays on the vulnerability of Torey. Stating that “things can only go up” after a suspect has been charged with Murder is not an ingenuous statement. By implying that Torey’s future would somehow be brighter if he “came clean” to committing a murder is a highly deceptive approach to take in communicating with Torey. The Court finds that such an approach has the effect of appealing to Torey’s vulnerability, i.e.— making him believe that confessing to a murder might be a better idea than first talking to a lawyer. After Detective Ganske states that “(p)eople make mistakes and things happen, he utilizes a tactic that is similar to the tactics used in *Innis* that ultimately amounted to coercive conduct and a suppressed confession. Ganske states,

This is...one of those things...it will only get worse, my friend. It'll eat you up. It'll start right heart, (indicating at his heart) and it will eat its way all the way up until it destroys you. I can tell you (pointing upwards) there is only one person watching right now. Okay? Cassie's here, she's watching...she knows. And you know she knows....Okay.

Here, Detective Ganske’s relationship-building tactics with Torey, even more clearly cross the line of statements an officer can express to a defendant once the defendant has invoked a right to have an attorney present. In effect, Detective Ganske’s statements can not be viewed in any

other light other than as statements designed to provoke a reaction or response from Torey. As in *Innis*, an objective person sitting in the interview room would likely conclude that Detective Ganske was trying to provoke guilt, emotion or passion in Torey that would have the outcome of eliciting a response, which it ultimately did. Therefore, the Court finds that the entire conversation, after Torey affirmatively nods his head in response to Sean's statement "What they are saying is true..." is suppressed.

After viewing and/or reading the evidence submitted and the testimony offered both at Torey's suppression hearing, and all Affidavits and Memorandum submitted by the parties, and carefully analyzing the facts as applied to the established law in this matter, the Court makes the following findings of essential facts and conclusions of law.

#### **FINDINGS OF FACT**

1. On September 27, 2006, Torey, Sean and Shannon all met with an attorney regarding this matter directly before going to the Pocatello Police Department for Torey's interview.
2. An attorney was not with the Adamciks when they arrived at the police station, nor did an attorney call the police station to advise the Detectives that the Adamciks wished to have an attorney present for Torey's interview.
3. Detectives Marchand, Ganske and Thomas spoke with Shannon and Sean, outside of Torey's presence, in which there was a discussion about an attorney and the possibility of conducting the interview the following day.
4. Shannon and Sean agreed to go forward with Torey's interview under the condition that the Adamciks could stop the interview at any time.
5. Sean and Shannon did not have an opportunity to speak with Torey after they had spoken with the Detectives but before the videotaped interview began.

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6. Torey was 16 years of age at the time of the interview.
7. At the time of the interview, Torey had completed his sophomore year of high school and was enrolled as a junior at Pocatello High School.
8. Neither Sean, Shannon, nor Torey had any notable experience with law enforcement prior to September 24, 2007, when the investigation of Torey began.
9. There is no evidence, one way or the other, indicating that Torey was deprived of food or sleep prior to the fourth interview.
10. Torey did not appear tired, ineffectual or vulnerable during the interview.
11. Torey is able to articulately express himself, both in verbal and written form.
12. Torey suffers from Attention Deficit Disorder and has a learning disability that affects the way he reads and his listening comprehension.
13. Detective Ganske made an ambiguous statement about whether Torey was free to leave that would have had the effect of confusing Torey on whether he was actually free to leave or not.
14. Torey did not have a copy of the *Miranda* rights waiver form while his rights were being read to him.
15. Torey's parents did not have a copy of the *Miranda* rights waiver form in front of them at any time.
16. Torey was read his *Miranda* rights prior to the interview being conducted.
17. Detective Ganske did not read the *Miranda* rights in a particularly fast or slow manner.
18. Torey signed a form waiving his *Miranda* rights before the questioning started.
19. Torey did not invoke his right to have counsel present after his rights were read to him and he signed the *Miranda* rights waiver form.

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20. Torey's parents did not invoke the right to have counsel present on behalf of their son after *Miranda* warnings were given to Torey.

21. After Torey invoked his right to counsel, the Detectives' first set of statements, as divided above, regarding the evidence they had gathered against him were not designed to elicit a response.

22. The relationship and trust building tactics used by the Detectives in the second set of statements, as divided above, had the effect of playing on Torey's vulnerability and were designed to elicit a response from Torey.

### CONCLUSIONS OF LAW

1. There is evidence to suggest that there was a discussion between Torey's parents and the Detectives regarding having an attorney present for the interview.
2. Even if Shannon invoked the right to counsel on behalf of Torey, Sean and Shannon waived the right to counsel once they agreed to go forward with the interview, under the condition they could stop the interview at any time.
3. Detectives Ganske, Thomas and Marchand did not coerce Sean and Shannon Adamcik into agreeing to go forward with the interview by threatening them with Torey's possible detention.
4. It is the State's burden to show that Torey knowingly, voluntarily and intelligently waived his *Miranda* rights.
5. Torey was in custody and not free to leave for purposes of his Fifth Amendment rights during the videotaped interview.
6. Detectives Ganske and Thomas read Torey his *Miranda* rights and did not downplay the

significance of those rights.

7. Torey's age, education, experience, all support a finding that Torey had the capacity to engage in the interview while also understanding that he was not obligated to answer any questions without counsel there.
8. Sean and Shannon had the capacity to understand that they had the right to stop the interview or invoke the right to counsel on behalf of Torey.
9. Torey voluntarily signed a form waiving his *Miranda* rights, and such an act is strong evidence that Torey understood his rights and the consequences of waiving them.
10. A review of the videotaped recording of Torey's interview shows that Torey was not in a state of fright, shock, or despair.
11. The evidence does not show that Torey was deprived of food or sleep so as to affect his capacity to knowingly, voluntarily, or intelligently waive his Constitutional rights.
12. The evidence, with particular attention to the Court's observation of Torey's demeanor during the interview and Detective Thomas's and Detective Ganske's testimony, support a finding that Torey's Attention Deficit Disorder or learning disability conditions did not overcome his ability to communicate and articulate responses to the Detectives' questions or understand his rights.
13. Based upon a review of the totality of the circumstances, taking into account Torey's age, experience, education, the fact that at least one parent was present at all times during the interview and any additional circumstances such as deprivation of food or sleep, and lack of prior experience with law enforcement, and Torey's ADD diagnosis and learning disability, the Court finds Torey had the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.

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14. Torey eventually did unambiguously invoke his right to counsel.
15. The Detectives ceased questioning, thereby scrupulously honoring Torey's invocation and allowed Torey and Sean to speak privately before reentering the videotaped interview room.
16. The following statements made by the Detectives after they reentered the room:

Detective Ganske: "You know what you need to do. You know exactly what happened. You know what you need to do. So unfortunately, you are not going anywhere tonight. You're going to be placed in custody tonight. Okay? I'm sorry that's the way it goes, but..."

Detective Thomas: You are going to be charged with First Degree Murder.

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Detective Ganske: Okay? But like I said, before you say anything, I encourage the two of you to talk to an attorney, you should do that. I am not pulling any punches here, still, your full cooperation can do nothing but help you at this point in time.

Sean: Understand that Torey? You know you want to talk to a lawyer...you understand that's the advice they gave you today, okay, and whatever you and the lawyer work out.

Detective Ganske: (facing Torey) We know the details. We got the knife that you used, we got the mask that you used, we've got the videotape. We've got it. There's a tape up in there that you buried. Okay? You tried to catch it on fire. All that stuff. You know what I'm talking about, I don't need to tell you that.

are not the functional equivalent of an interrogation. Rather, the statements are an objective presentation of the evidence they had gathered against Torey.

17. The above statements are an objective, noncoercive, truthful, recitation of the evidence that struck a responsive chord in Sean, not in Torey.
18. When the Detectives explained to Torey and Sean why Torey was being arrested and charged with Murder and Conspiracy to Commit Murder, the Detectives were performing a duty that is normally attendant with arrest and custody.

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19. Sean Adamcik is not a vicarious officer of the state.
20. When Sean asks Torey whether the Detectives statements regarding the evidence they had gathered against Torey is true, he was not coerced, provoked, or otherwise moved by the detectives to do so.
21. Torey's response, in affirmatively nodding his head to Sean's statement, "What they are saying is true..." is admissible.
22. After Torey responds to Sean's statement, "(w)hat they are saying is true," by nodding his head affirmatively, the Detectives' trust and relationship building tactics fashion a dialogue that is the functional equivalent of an interrogation.
23. The entire conversation after Torey gives this affirmative response to Sean's statement, "What they are saying is true..." is therefore suppressed.

THEREFORE, IT IS HEREBY ORDERED that the Defendant's Motion to Suppress the Video-taped Interview, filed in the above-entitled matter, shall be DENIED in part, and GRANTED, in part.

IT IS SO ORDERED.

DATED this 17<sup>th</sup> day of May, 2007.

  
Peter McDermott  
District Judge

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17<sup>th</sup> day of May, 2007, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Bannock County Prosecutor

- ☐ U.S. Mail
- ☐ Overnight Delivery
- ☒ Hand Deliver
- ☐ Facsimile

Bron Rammell & Aaron Thompson  
Dial, May & Rammell  
216 W. Whitman/ P.O. Box 370  
Pocatello, Idaho 83204-370

- ☒ U.S. Mail
- ☐ Overnight Delivery
- ☐ Hand Deliver
- ☐ Facsimile

DATED this 17<sup>th</sup> day of May, 2007.

Kathy Smith  
Deputy Clerk

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ORIGINAL

2007 JUN 21 PM 9:00

KS

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Idaho State Bar No. 4389  
Idaho State Bar No. 6235

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,

Plaintiff,

vs.

TOREY ADAMCIK,

Defendant.

CASE NO. CR-2006-17984-FE-AA

**DEFENDANT'S THIRD  
SUPPLEMENTAL RESPONSE TO  
REQUEST FOR DISCOVERY**

Without waiving any of Defendant's prior objections, Defendant provides the following information and supplementation to the information originally provided to the State on February 7, 2007, March 6, 2007, and May 16, 2007:

REQUEST NO. 1: Any books, papers, documents, photographs, tangible objects or copies or portions thereof, which are within the possession, custody or control of the Defendant, and which the Defendant intends to introduce at trial in the above-mentioned case.

RESPONSE TO REQUEST NO. 1: Other than those items identified in previous Discovery Responses, Defendant also intends to introduce the following:

1. Photographs numbered one (1) through fourteen (14), taken by expert Rudi Reit and entitled "Knife Studies", attached hereto;
2. Photographs numbered one (1) through nine (9), taken by expert Rudi Reit and entitled "Knife Test", attached hereto.

888

4. Curriculum Vitae of Gregory DeClue, Ph.D.;

DATED this 21<sup>st</sup> day of May, 2007.

DIAL, MAY & RAMMELL, CHARTERED  
Attorneys for Defendant,

889  
  
\_\_\_\_\_  
BRON RAMMELL

CERTIFICATE OF SERVICE

I certify that on this date a copy of the *Defendant's Third Supplemental Response to Request For Discovery* was served on the following named persons at the addresses shown and in the manner indicated.

Bannock County Prosecutor  
P.O. Box P  
Pocatello, ID 83205-0050

☐ Facsimile  
☒ Hand Delivery  
☐ U.S. Mail

DATED this 21<sup>st</sup> day of May, 2007.

  
\_\_\_\_\_  
BRON RAMMELL

889

ORIGINAL

2007 MAY 21 PM 3:00

KS

Bron M. Rammell, Esq.  
Aaron N. Thompson, Esq.  
DIAL, MAY & RAMMELL, CHARTERED  
216 W. Whitman/P.O. Box 370  
Pocatello, Idaho 83204-0370  
Phone: (208) 233-0132 Fax: (208) 234-2961  
Idaho State Bar No. 4389  
Idaho State Bar No. 6235

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,

Plaintiff,

vs.

TOREY ADAMCIK,

Defendant.

CASE NO. CR-2006-17984-FE-AA

**POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION TO LIMIT  
EXPERTS**

The Defendant, through counsel, submits the following points and authorities in support of his Motion in Limine to limit the testimony of the State's experts.

1. IRE 702 addresses the testimony of experts in Idaho courts. It states that the court may allow expert testimony if:
  - a. The witness is qualified as an expert, and
  - b. The witnesses specialized technical or scientific knowledge will "assist the trier of fact" to understand the evidence.
2. "The foundation for the admission of opinion testimony based upon scientific knowledge includes both that the witness is an expert in the field and that there is a scientific basis for the expert's opinion." *Swallow v. Emergency Medicine of Idaho*, 138 Idaho 589,593 (2003).
3. There must be a "scientific" basis for an opinion based on scientific knowledge. If the reasoning or methodology is not scientifically sound, "then the opinion will not assist the trier of fact..." *Id* at 592.

890

4. An expert's opinion is only admissible if the opinion conveys knowledge "beyond common experience." *State v. Hester* 114 Idaho 688,693 (1988).
5. Opinions based on "common sense" are not appropriate. *Id.* at 693,696.
6. "Ordinarily, testimony about mere possibilities rather than probabilities is inadmissible because it is speculative or irrelevant and does not aid in the fact finding process." *State v. Schneider* 129 Idaho 59,62 (Ct. App. 1996).
7. Thus, where an expert was allowed to testify that he believed the lewd conduct defendant was the alleged victim's abuser, reversible error occurred. *Hester at 688, 696.*
8. "It is the duty of the prosecutor to see that a defendant has a fair trial, and that nothing but competent evidence is submitted to the jury." *State v. Christiansen* Docket No. 33527 (2007), citing *State v. Irwin* 9 Idaho 35,44(1903).
9. Because the prosecution must not "exert their skill and ingenuity" to elicit testimony that is improper, and over 100 years of Idaho jurisprudence declares that it is a clear "invasion of the province of the jury" for a witness to opine as to the truthfulness of another, opinion testimony that addresses the truthfulness of Torey Adamcik is fundamental error.
10. An opinion of a witness that is beyond that witnesses' specialized knowledge, similarly invades the province of the jury, and questions intended to elicit such an impermissible response should not be allowed.
11. As demonstrated in *Hester*, even if the opinion is proper under *IRE* 702, it may still be more prejudicial than probative and improper under *IRE* 403.
12. In this case, testimony describing a defendant as trying to "dodge" an answer, for example, is impermissible opinion, is the same as asserting that the defendant is untruthful and the prejudicial impact of such a statement is far outweighed by any probative value given. It is for the jury to judge the veracity of the defendant and the witnesses.

DATED this 21<sup>st</sup> day of May, 2007.

  
BRONIE RAMMELL

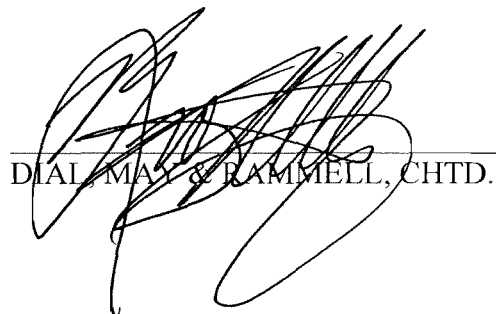
CERTIFICATE OF SERVICE

I certify that on this date a copy of the Points and Authorities in Support of Motion to Limit Experts was served on the following named personal at the addresses shown and in the manner indicated.

892  
Bannock County Prosecutor  
P.O. Box P  
Pocatello, ID 83205-0050

[ ] U.S. Mail  
[ ☒ ] Hand Delivery  
[ ] Facsimile

DATED this 21<sup>st</sup> day of May, 2007.

  
DIAL MAY & RAMMELL, CHTD.

892

2007 MAY 22 PM 1:26

KS

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
IN AND FOR THE STATE OF IDAHO, COUNTY OF BANNOCK

STATE OF IDAHO,

Plaintiff,

vs.

TOREY MICHAEL ADAMCIK,

06-14-1990

Defendant.

CASE NO. CR2006-17984FE-AA

MINUTE ENTRY AND ORDER

Defendant appeared before the Court pursuant to Defendant's Motion in Limine Regarding Expert Testimony this 21<sup>st</sup> day of May, 2007, with counsel Bron Rammell and intern Tyler Bair. Mark L. Hiedeman, Bannock County Prosecuting Attorney, and Vic A. Pearson, Chief Deputy Prosecuting Attorney, appeared on behalf of the State.

Defendant called Charles Garrison, M.D., who was sworn and testified.

The Court received oral argument of respective counsel.

NOW, THEREFORE, IT IS HEREWITH ORDERED that the credibility of witnesses is in the province of the jury as to who is being truthful or not truthful at trial. In most circumstances it would not be appropriate for a witness to give an opinion on whether someone is truthful or not but, the witness should be allowed to state what he/she did, and what he/she observed



At trial any evidence that is going to be admitted will have to have a proper foundation laid, be relevant, and in some situations this court must determine whether or not the probative value of the offered evidence is outweighed by unfair prejudice to defendant.

At trial prior to an expert witness giving an opinion a foundation will have to be established.

IT IS FURTHER ORDERED challenges for cause for Twin Falls Jurors who have completed Questionnaire under oath will commence **Wednesday, May 23, 2007, at 9:00 a.m.**, District Courtroom No. 300, Bannock County Courthouse.

The Court thereafter advised that on **Wednesday May 30, 2007, at 9:00 a.m.**, Voir Dire will commence in Twin Falls. Counsel shall direct questions to the panel as a whole, and not ask the same questions which have previously been answered in the Questionnaire. If certain jurors are to be questioned privately, in chambers, this procedure will be followed: Once the Court concludes Voir Dire questions and passes the panel for cause, the State will inquire and pass the panel for cause with the reservation of possible jurors who the State may want examined in chambers, upon conclusion of that examination the State will pass the entire panel for cause and thereafter Defendant will question and pass in the same manner. There will be Thirty-eight (38) potential jurors initially called. Each party shall have twelve (12) peremptory challenges.

IT IS FURTHER ORDERED Defendant is REMANDED to the custody of the Bannock County Sheriff with NO BAIL.

IT IS SO ORDERED.

DATED this 21<sup>st</sup> day of May, 2007.

  
PETER D. McDERMOTT  
District Judge

Copies to:

Mark L. Hiedeman/Vic A. Pearson  
Aaron Thompson/Bron Rammell  
Bannock County Sheriff  
Bannock County Court Marshal – Carrie Zitterkopft  
Linda Wright, Twin Falls Trial Court Administrator  
Jerri Wooley, Twin Falls Jury Commissioner

MARK L. HIEDEMAN  
BANNOCK COUNTY PROSECUTOR  
P.O. BOX P  
POCATELLO, ID 83205-0050  
(208) 236-7280

2007 MAY 22 PM 2:46  
Kz

**VIC A. PEARSON ISB #6429**  
Chief Deputy Prosecuting Attorney

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO, )  
 )  
Plaintiff, )  
 )  
vs. ) **FIFTH**  
 ) **MOTION IN LIMINE**  
 )  
TOREY MICHAEL. ADAMCIK, )  
 )  
Defendant. )  
\_\_\_\_\_ )

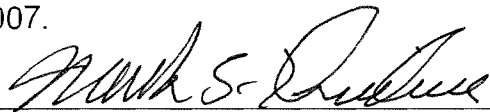
COMES NOW the State of Idaho, by and through MARK L. HIEDEMAN,  
Prosecuting Attorney, in and for the County of Bannock, State of Idaho, and moves the  
Court for an Order Excluding the following information:

1. DVD entitled "Movie"
2. Anticipated knife study photographs to be produced on May 21, 2007
3. Transcription of Draper videotape, prepared by transcriptionist Kelly Harms that is anticipated to be produced on May 21, 2007;
4. Curriculum Vitae of Rudi Reit
5. Curriculum Vitae of Dr. Edward Leis
6. Curriculum Vitae of Mark Klingler
7. Curriculum Vitae of Kelly Harms that is anticipated to be produced on May 21, 2007
8. Curriculum Vitae of Kelly Brockholm anticipated to be produced on May 21, 2007

This motion is based on the grounds and for the reason that follow:

1. due to relevancy and late disclosure
2. due to late disclosure
3. due to the State never having received this transcript
4. due to the State never having received information pertaining to this possible witness' testimony or reports.
5. due to the State never having received information pertaining to this possible witness' testimony or reports.
6. due to the State never having received information pertaining to this possible witness' testimony or reports.
7. due to the State never having received information pertaining to this possible witness' testimony or reports.
8. due to the State never having received information pertaining to this possible witness' testimony or reports.

DATED this 26<sup>th</sup> day of May, 2007.



MARK L. HIEDEMAN  
Prosecuting Attorney

897

**ORIGINAL**

MAY 22 PM 3:35

Kg

Bron M. Rammell, Esq.  
Aaron N. Thompson, Esq.  
DIAL, MAY & RAMMELL, CHARTERED  
216 W. Whitman/P.O. Box 370  
Pocatello, Idaho 83204-0370  
Phone: (208) 233-0132 Fax: (208) 234-2961  
Idaho State Bar No. 4389  
Idaho State Bar No. 6235

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

898  
STATE OF IDAHO,

Plaintiff,

vs.

TOREY ADAMCIK,

Defendant.

CASE NO. CR-2006-17984-FE-AA

**DEFENDANTS PROPOSED JURY  
INSTRUCTIONS**

Torey Adamcik, by and through his counsel of record, Bron Rammell and Aaron N. Thompson of the firm Dial, May & Rammell, Chtd., hereby submits Defendant's Proposed Jury Instructions for the purpose of the jury trial set in this matter on May 30, 2007.

DATED this 22<sup>nd</sup> day of May, 2007.

DIAL, MAY & RAMMELL, CHTD.

BRON RAMMELL

898

CERTIFICATE OF SERVICE


I certify that on this date a copy of the *Defendant's Proposed Jury Instructions* was served on the following named personal at the addresses shown and in the manner indicated.

Bannock County Prosecutor  
P.O. Box P  
Pocatello, ID 83205-0050

☐ U.S. Mail  
☒ Hand Delivery  
☐ Facsimile

DATED this 22<sup>nd</sup> day of May, 2007.

899



BRIAN MAY & RAMMELL, CHTD.

INSTRUCTION NO.

This is the case of State of Idaho v. Torey Adamcik.  
Are the parties ready to proceed?

In a moment the Clerk will call the roll of the jury.  
When your name is called you will also be identified with a  
number. Please remember your number as we will be using it  
later in the jury selection process.

The Clerk will now call the roll of the jury.

90<sup>0</sup>  
Ladies and Gentlemen, you have been summoned as  
prospective jurors in the lawsuit now before us. The first  
thing we do in a trial is to select 12 jurors and, two  
alternate jurors from among you.

I am Peter McDermott, the judge in charge of the  
courtroom and this trial. The deputy clerk of court, Cathy  
Smith, marks the trial exhibits and administers oaths to  
you jurors and to the witnesses. The bailiff, Kerry  
Zitterkopf, will assist me in maintaining courtroom order  
and working with the jury. The Court reporter, Stephanie  
Davis, will keep a verbatim account of all matters of  
record during the trial.

Each of you is qualified to serve as a juror of this  
court. This call upon your time does not frequently come to  
you, but is part of your obligation for your citizenship in  
this state and country. No one should avoid fulfilling this  
obligation except under the most pressing circumstances.  
Service on a jury is a civic and patriotic obligation which

all good citizens should perform.

Service on a jury affords you an opportunity to be a part of the judicial process, by which the legal affairs and liberties of your fellow men and women are determined and protected under our form of government. You are being asked to perform one of the highest duties of citizenship, that is, to sit in judgment on facts which will determine the guilt or innocence of persons charged with a crime.

901 To assist you with the process of selection of a jury, I will introduce you to the parties and their lawyers and tell you in summary what this action is about. When I introduce an individual would you please stand and briefly face the jury panel and then retake your seat.

The state of Idaho is the plaintiff in this action. The lawyers representing the State are Mark L. Hiedeman and Vic Pearson, a member of the county prosecuting attorney's staff. The prosecuting attorney will be assisted by Detective Toni Vollmer and Detective Andy Thomas, law enforcement officers.

The defendant in this action is Torey Adamcik. The attorney's representing Torey are Bron Rammell and Aaron N. Thompson. I will now read you the pertinent portion of the complaint which sets forth the charges against the defendant. The complaint is not to be considered as evidence but is a mere formal charge against the defendant. You must not consider it as evidence of guilt and you must not be influenced by the fact that charges have been filed.

With regard to Torey Adamcik, the complaint charges in Count I that Torey Adamcik, on or between the 22<sup>nd</sup> and 23<sup>rd</sup> days of September, 2006, did willfully, unlawfully, deliberately, with premeditation and with malice aforethought, kill and murder Cassie Stoddart, a human being, by



purchasing knives and stabbing Cassie Stoddart from which the victim died in Bannock County, Idaho.

The complaint in Count II charges that defendant, Torey Michael Adamcik, in the County of Bannock, State of Idaho, on or between the 22<sup>nd</sup> and 23<sup>rd</sup> days of September, 2006, did willfully and knowingly, combine and conspire with Brian Lee Draper to commit the crime of murder in the first degree, an offense prescribed by the laws of the State of Idaho, Idaho Code § 18-4001-02-03(a).

Overt Acts

- 902
1. On or about the 29<sup>th</sup> and/or 30<sup>th</sup> days of August, 2006, Torey Michael Adamcik, did purchase and/or receive knives that were used in the commission if the murder of Cassie Stoddart.
  2. On or about the 21<sup>st</sup> and/or 22<sup>nd</sup> days of September, 2006, Torey Michael Adamcik, did travel to the residence located at 11372 Whispering Cliffs, Pocatello, Bannock County, Idaho, with Brian Lee Draper to commit the murder of Cassie Stoddart.
  3. On or about the 22<sup>nd</sup> and/or 23<sup>rd</sup> days of September, 2006, Torey Michael Adamcik did retrieve a change of clothes, mask, and murder weapons which were used in the commission of the murder of Cassie Stoddart.
  4. On or about the 22<sup>nd</sup> and/or 23<sup>rd</sup> days of September, 2006, Torey Michael Adamcik did lie in wait in the downstairs portion of the residence located at 11372 Whispering Cliffs, Pocatello, Bannock County, Idaho in preparation of committing the murder of Cassie Stoddart.

To these charges Mr. Adamcik has pled not guilty.

Under our law and system of justice, every defendant is presumed to be innocent. The effect of this presumption is to require the state to prove a defendant's guilt beyond a reasonable doubt in order to support a conviction against that defendant.

As the judge in charge of this courtroom, it is my duty, at various times during the course of this trial, to instruct you as to the law that applies to this case.

90<sup>m</sup> The duty of the jury is to determine the facts; to apply the law set forth in the instructions to those facts, and in this way to decide the case. In applying the Court's instructions as to the controlling law, you must follow those instructions regardless of your opinion of what the law is or what the law should be, or what any lawyer may state the law to be.

During the course of this trial, including the jury selection process, you are instructed that you are not to discuss this case among yourselves or with anyone else, nor to form any opinion as to the merits of the case until after the case has been submitted to you for your determination.

We will now call an initial selection of 38 jurors. As your name is called please take a seat as directed by the bailiff. The clerk will please draw the initial jurors' names.

\* \* \*\* The clerk calls the jurors \* \* \*\*

In this part of the jury selection, you will be asked questions touching on your qualifications to serve as

jurors in this particular case. This part of the case is known as the voir dire examination.

Voir dire examination is for the purpose of determining if your decision in this case would in any way be influenced by opinions which you now hold or by some personal experience or special knowledge which you may have concerning the subject matter to be tried. The object is to obtain twelve persons who will impartially try the issues of this case upon the evidence presented in this courtroom without being influenced by any other factors.

Please understand that this questioning is not for the purpose of prying into your affairs for personal reasons but is only for the purpose of obtaining an impartial jury.

904 Each question has an important bearing upon your qualifications as a juror and each question is based upon a requirement of the law with respect to such qualifications. Each question is asked each of you, as though each of you were being questioned separately.

If your answer to any question is yes, please raise your hand. You will then be asked to identify yourself both by name and juror number.

At this time I would instruct both sides to avoid repeating any question during this voir dire process which has already been asked. I would ask counsel to note, however, that you certainly have the right to ask follow-up questions of any individual juror based upon that juror's response to any previous question.

The jury should be aware that during and following the voir dire examination one or more of you may be challenged.

Each side has a certain number of "peremptory challenges", by which I mean each side can challenge a juror and ask that he or she be excused without giving a

reason therefore. In addition each side has challenges "for cause", by which I mean that each side can ask that a juror be excused for a specific reason. If you are excused by either side please do not feel offended or feel that your honesty or integrity is being questioned. It is not.

The clerk will now swear the entire jury panel for the voir dire examination.

905

INSTRUCTION NO.

During the course of this trial, including the jury selection process, you are instructed that you are not to discuss this case among yourselves or with anyone else, nor to form an opinion as to the merits of the case until after the case has been submitted to you for your determination.

906

906

INSTRUCTION NO.

1. You have heard the charge made in the information against the defendant.

Other than what I have told you, do any of you know anything about this case, either through your own personal knowledge, by discussion with anyone else or from radio, television or newspapers?

**SUGGESTED FOLLOW UP QUESTIONS WHERE THERE IS KNOWLEDGE OF THE CHARGE:**

Do you have a state of mind with reference to the charges against this defendant which would in any way prevent you from acting with impartiality?

907  
Do you feel that you can eliminate and disregard everything that you have heard or read pertaining to this case and render an impartial verdict based solely upon the evidence presented in this courtroom?

2. Are any of you related by blood or marriage to Torey or do you know him from any business or social relationship?

**SUGGESTED FOLLOW UP QUESTION WHERE THERE IS KNOWLEDGE OF DEFENDANT:**

In which of those capacities have you known Torey?

Would your knowledge prevent you from acting with impartiality in this case?

Would your knowledge cause you to give greater or lesser

weight to any statement that he might make in this case by reason of such knowledge?

3. The individual who signed the complaint in this matter is Mark L. Hiedeman. Are any of you related by blood or marriage to Mr. Hiedeman, or do you know him or Mr. Pearson from any business or social relationship?

**SUGGESTED FOLLOW UP QUESTION WHERE THERE IS KNOWLEDGE OF COMPLAINANT:**

In which of those capacities have you known them?

Would your knowledge prevent you from acting with impartiality in this case?

908  
Would your knowledge cause you to give greater or lesser weight to any statement that they might make in this case by reason of such knowledge?

4. The alleged victim in this matter is Cassie Stoddart. Are any of you related by blood or marriage to Ms. Stoddart, or do you know her from any business or social relationship?

**SUGGESTED FOLLOW UP QUESTION WHERE THERE IS KNOWLEDGE OF VICTIM:**

In which of those capacities have you known Ms. Stoddart?

Would your knowledge prevent you from acting with impartiality in this case?

5. Does the relationship of guardian and ward,

attorney and client, master and servant, landlord and tenant, boarder or lodger exist between any of you and Torey, Mr. Hiedeman, or Mr. Pearson?

6. Are any of you a party in any civil action against Torey?

7. Have any of you ever complained against Torey or been accused by Mr. Hiedeman or Vic Pearson in a criminal prosecution?

8. Have any of you ever formed or expressed an unqualified opinion that the defendant, Torey Adamcik, is guilty or not guilty of the offense charged?

90<sup>a</sup>  
9. I have introduced you to the lawyers representing the parties. Are any of you related by blood or marriage to any of the lawyers or do any of you know the any of the lawyers from any professional, business or social relationship?

**SUGGESTED FOLLOW UP QUESTION WHERE THERE IS KNOWLEDGE OF COUNSEL:**

Who do you know and how do you know them?

Would your knowledge of Mr. Rammell or Mr. Thompson prevent you from acting with impartiality in this case?

Would your knowledge of Mr. Rammell or Mr. Thompson cause you to give greater or lesser weight to the evidence presented by them?

10. Do any of you have a religious or moral position



that would make it impossible to render judgment?

11. Do any of you have any bias or prejudice either for or against Torey?

12. I will now read to you the names of those who may possibly testify in this cause. I will read their names slowly and I ask that if you know any of them in any capacity that you immediately advise me of this fact.

#### **WITNESS LIST**

##### **Bannock County Sheriff's Office**

910  
Doug Armstrong  
Mark Ballard  
Justin Cannon  
Tom Foltz  
Alex Hamilton  
Karen Hatch  
Scott Schaffer  
Dora Smith  
Andy Thomas  
John Underwood  
Toni Vollmer

##### **Pocatello Police Department**

Mike Brennan  
Bill Collins  
Robb Eggimann  
Chad Higbee  
Scott Marchand  
Dee O'Brien  
Lora Rosa  
Roger Schei  
John Walker

##### **Idaho State Police Forensic Lab**

Skylar Anderson  
Gary Cushman  
Stacey Guess  
Cynthia Hall

Shannon Larson  
Rocklan McDowell  
Don Wyckoff

**Other Forensic Labs**

Lee Blum, NMS labs

**Idaho State Police Investigations**

Beth Bradbury  
Don Broughton  
Gary Brush  
James Christensen  
Frank Csajko  
Julie Donahue  
John Ganske  
Ed Holbert  
John Kempf  
Tom Sellers

**Expert Witness**

Kelly Brockholm, Forensic Scientist

Crime Scene Technology, Inc.

Dr. Charles Garrison

PMC East

Kelly Harms, Transcriptionist

OC Transcription Services

Mark Klingler, Police Procedures Expert

Robert LaPier and Associates

Dave Lance

Downard Funeral Home

Dr. Ed Leis

Medical Examiner's Office, Utah

Jeff J. Pratt, Document Examiner

Rudi A. Reit, Senior Crime Scene Analyst

Dr. Steve Skoumal

Western Pathology Assoc.

**Civilian Witnesses**

Dr. Barbara Adamcik  
Lacy Adamcik  
Sean Thomas Adamcik  
Shannon Adamcik  
Rusty Adamson  
Alexis Anderson  
Brooke Arellano  
Alyssa Armijo

9/2  
Micah Ashton  
Susan Ashton  
Kristen Barta  
Mathew Patrick Beckham  
Sheri Beckham  
Mary Blattner  
Shelbie Cammack  
Miranda Chacon  
Tiffany Chavez  
Allison Serr Contreras  
Dylan Contreras  
Frank Contreras  
Brittany Corbridge  
Joel Cunningham  
Danni Dixon  
Brian Lee Draper  
Kerry Lynn Draper  
Pamela Draper  
Tracey Dustin  
Adam Dykman  
David Dykman  
Lori Dykman  
Mathew Edwards  
Tristin Eldridge  
Kaleb Gardner  
Heather Gravatt  
Sandra Graves  
Robyn Gray  
Heather Harmon  
Randall P. Harris  
Darrell Wayne Henderson  
Shari Dora Henderson  
Frederick Hofmeister  
David Holtzen  
Gabe Joel Jardine  
Jennifer Lynette Jardine  
Andrew Jones  
Jake Jones  
Joy Jones  
Nathan Jones  
Joseph Thomas Lacey  
Matthew Lanham  
Joe Lucero  
Alaina Luras  
David Luras  
Pat Luras

2/17  
Dan Maccluer  
Lounella Maccluer  
Max Maccluer  
J.R. Martins  
Chris Mathews  
Cheyenne McCluskey  
Shelby McCluskey  
Robbie McCoy  
Shaylyn McIntire  
Catherine Murray  
Christopher Nix  
Mark Olson  
Ashley Omans  
Kadee Pena  
Amber Chanteal Phillips  
April Phillips  
Ellen Mae Phillips  
Dexter Pitman  
Todd Praska  
Victor Price  
Ramana Rayborn  
Traci Santillanes  
Wade Douglas Semons  
William Andrew Semons  
Wendy Shelman  
Josephina Sisneros  
Paul Sisneros  
Angela Smith  
Ethan Smith  
Riley Smith  
Anna Stoddart  
Cindy Targett  
Jerry Targett  
Aubrey Taylor  
Keely Watkins  
Jena Wilcox  
Andrew Witcher  
Richard Wolff  
Jim Workman  
Ronald Young

**SUGGESTED FOLLOW UP QUESTIONS WHERE THERE IS KNOWLEDGE OF  
POSSIBLE WITNESSES:**

In what capacity have you known [name of witness]?  
Do you feel you have a state of mind with reference to your  
knowledge of in the event of [his] [her] testifying in this

cause which would prevent you from acting with impartiality?

Would your relationship or knowledge of [name of witness] cause you to give greater or lesser weight to [his] [her] testimony by reason of such knowledge?

**[Repeat as necessary for each witness]**

13. Are there any of you who are unwilling to follow my instructions to you, the jury, as to the law that you must apply in determining this case?

14. Are there any of you, if selected as a juror in this case, who is unwilling or unable to render a fair and impartial verdict based upon the evidence presented in this courtroom and the law as instructed by the Court?

914  
15. Do any of you have any other reason why you cannot give this case your undivided attention and render a fair and impartial verdict?

INSTRUCTION NO.

Now that you have been sworn as jurors to try this case, I want to go over with you what will be happening. I will describe how the trial will be conducted and what we will be doing. At the end of the trial, I will give you more detailed guidance on how you are to reach your decision.

Because the state has the burden of proof, it goes first. After the state's opening statement, the defense may make an opening statement, or may wait until the state has presented its case.

215 The state will offer evidence that it says will support the charge(s) against the defendant. The defense may then present evidence, but is not required to do so. If the defense does present evidence, the state may then present rebuttal evidence. This is evidence offered to answer the defense's evidence.

After you have heard all the evidence, I will give you additional instructions on the law. After you have heard the instructions, the state and the defense will each be given time for closing arguments. In their closing arguments, they will summarize the evidence to help you understand how it relates to the law. Just as the opening statements are not evidence, neither are the closing arguments. After the closing arguments, you will leave the courtroom together to make your decision. During your deliberations, you will have with you my instructions, the exhibits admitted into evidence and any notes taken by you in court.

INSTRUCTION NO.

This criminal case has been brought by the state of Idaho. I will sometimes refer to the state as the prosecution. The state is represented at this trial by the prosecuting attorneys, Mark Hiedeman and Vic Pearson. The defendant, Torey Adamcik, is represented by attorneys, Bron Rammell and Aaron N. Thompson.

The defendant is charged by the state of Idaho with violation of law. The charge against the defendant is contained in the Complaint. The clerk shall read the Complaint and state the defendant's plea.

916 The Complaint is simply a description of the charge; it is not evidence.

INSTRUCTION NO.

917  
Your duties are to determine the facts, to apply the law set forth in my instructions to those facts, and in this way to decide the case. In so doing, you must follow my instructions regardless of your own opinion of what the law is or should be, or what either side may state the law to be. You must consider them as a whole, not picking out one and disregarding others. The order in which the instructions are given has no significance as to their relative importance. The law requires that your decision be made solely upon the evidence before you. Neither sympathy nor prejudice should influence you in your deliberations. Faithful performance by you of these duties is vital to the administration of justice.

In determining the facts, you may consider only the evidence admitted in this trial. This evidence consists of the testimony of the witnesses, the exhibits offered and received, and any stipulated or admitted facts. The production of evidence in court is governed by rules of law. At times during the trial, an objection may be made to a question asked a witness, or to a witness' answer, or to an exhibit. This simply means that I am being asked to decide a particular rule of law. Arguments on the admissibility of evidence are designed to aid the Court and are not to be considered by you nor affect your deliberations. If I sustain an objection to a question or to an exhibit, the witness may not answer the question or the exhibit may not be considered. Do not attempt to guess what the answer might have been or what the exhibit might have shown. Similarly, if I tell you not to consider a particular statement or exhibit you should put it out of



your mind, and not refer to it or rely on it in your later deliberations.

During the trial I may have to talk with the parties about the rules of law which should apply in this case. Sometimes we will talk here at the bench. At other times I will excuse you from the courtroom so that you can be comfortable while we work out any problems. You are not to speculate about any such discussions. They are necessary from time to time and help the trial run more smoothly.

Some of you have probably heard the terms "circumstantial evidence," "direct evidence" and "hearsay evidence." Do not be concerned with these terms. You are to consider all the evidence admitted in this trial.

9/8  
However, the law does not require you to believe all the evidence. As the sole judges of the facts, you must determine what evidence you believe and what weight you attach to it.

There is no magical formula by which one may evaluate testimony. You bring with you to this courtroom all of the experience and background of your lives. In your everyday affairs you determine for yourselves whom you believe, what you believe, and how much weight you attach to what you are told. The same considerations that you use in your everyday dealings in making these decisions are the considerations which you should apply in your deliberations.

In deciding what you believe, do not make your decision simply because more witnesses may have testified one way than the other. Your role is to think about the testimony of each witness you heard and decide how much you believe of what the witness had to say.

A witness who has special knowledge in a particular matter may give an opinion on that matter. In determining the weight to be given such opinion, you should consider the qualifications and credibility of the witness and the reasons given for the opinion. You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled.

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INSTRUCTION NO.

If during the trial I may say or do anything which suggests to you that I am inclined to favor the claims or position of any party, you will not permit yourself to be influenced by any such suggestion. I will not express nor intend to express, nor will I intend to intimate, any opinion as to which witnesses are or are not worthy of belief; what facts are or are not established; or what inferences should be drawn from the evidence. If any expression of mine seems to indicate an opinion relating to any of these matters, I instruct you to disregard it.

920

INSTRUCTION NO.

If you wish, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. You should not let note-taking distract you so that you do not hear other answers by witnesses. When you leave at night, please leave your notes in the jury room.

If you do not take notes, you should rely on your own memory of what was said and not be overly influenced by the notes of other jurors. In addition, you cannot assign to one person the duty of taking notes for all of you.

INSTRUCTION NO.

It is important that as jurors and officers of this court you obey the following instructions at any time you leave the jury box, whether it be for recesses of the court during the day or when you leave the courtroom to go home at night.

92w First, do not talk about this case either among yourselves or with anyone else during the course of the trial. You should keep an open mind throughout the trial and not form or express an opinion about the case. You should only reach your decision after you have heard all the evidence, after you have heard my final instruction and after the final arguments. You may discuss this case with the other members of the jury only after it is submitted to you for your decision. All such discussion should take place in the jury room.

Second, do not let any person talk about this case in your presence. If anyone does talk about it, tell them you are a juror on the case. If they won't stop talking, report that to the bailiff as soon as you are able to do so. You should not tell any of your fellow jurors about what has happened.

Third, during this trial do not talk with any of the parties, their lawyers or any witnesses. By this, I mean not only do not talk about the case, but do not talk at all, even to pass the time of day. In no other way can all parties be assured of the fairness they are entitled to expect from you as jurors.

Fourth, during this trial do not make any investigation of this case or inquiry outside of the

courtroom on your own. Do not go any place mentioned in the testimony without an explicit order from me to do so. You must not consult any books, dictionaries, encyclopedias or any other source of information unless I specifically authorize you to do so.

Fifth, do not read about the case in the newspapers. Do not listen to radio or television broadcasts about the trial. You must base your verdict solely on what is presented in court and not upon any newspaper, radio, television or other account of what may have happened.

INSTRUCTION NO.

Each count charges a separate and distinct offense. You must decide each count separately on the evidence and the law that applies to it, uninfluenced by your decision as to any other count. The defendant may be found guilty or not guilty on either or both of the offenses charged.

924

INSTRUCTION NO.

You have now heard all the evidence in the case. My duty is to instruct you as to the law.

You must follow all the rules as I explain them to you. You may not follow some and ignore others. Even if you disagree or don't understand the reasons for some of the rules, you are bound to follow them. If anyone states a rule of law different from any I tell you, it is my instruction that you must follow.



INSTRUCTION NO.

As members of the jury it is your duty to decide what the facts are and to apply those facts to the law that I have given you. You are to decide the facts from all the evidence presented in the case.

The evidence you are to consider consists of:

1. sworn testimony of witnesses;
  2. exhibits which have been admitted into evidence;
- and
3. any facts to which the parties have stipulated.

Certain things you have heard or seen are not evidence, including:

926  
1. arguments and statements by lawyers. The lawyers are not witnesses. What they say in their opening statements, closing arguments and at other times is included to help you interpret the evidence, but is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, follow your memory;

2. testimony that has been excluded or stricken, or which you have been instructed to disregard;

3. anything you may have seen or heard when the court was not in session.

INSTRUCTION NO.

927  
You cannot find the defendant guilty murder in the first degree or conspiracy to commit murder in the first degree unless the circumstances proved by the evidence are consistent with the theory that the defendant is guilty, and they cannot be reconciled with any rational theory of the defendant's innocence. If the evidence is susceptible of two reasonable interpretations, one of which points to the defendant's guilt and the other to the defendant's innocence, it is your duty to adopt that interpretation which points to the defendant's innocence, and to reject the other which points to the defendant's guilt. In addition, each fact which is essential to complete a set of circumstances necessary to establish the defendant's guilt must be proved beyond a reasonable doubt.

INSTRUCTION NO.

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,

Plaintiff,

vs.

TOREY ADAMCIK,

Defendant.

CASE NO. CR-2006-17984-FE-AA

We, the Jury, unanimously find the defendant Torey Adamcik,

COUNT I

**(MARK ONLY ONE OF THE FOLLOWING COUNT I VERDICTS**

\_\_\_\_\_ **NOT GUILTY** of murder in the first degree.

\_\_\_\_\_ **NOT GUILTY** of conspiracy to commit murder in the first degree.

\_\_\_\_\_ **GUILTY** of murder in the first degree.

\_\_\_\_\_ **GUILTY** of conspiracy to commit murder in the first degree.

Dated this \_\_\_\_\_ day of June, 2007.

\_\_\_\_\_  
Presiding Officer

\_\_\_\_\_  
Juror

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Juror

Juror

Juror

Juror

Juror

Juror

Juror

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Juror

INSTRUCTION NO.

A defendant in a criminal trial has a constitutional right not to be compelled to testify. The decision whether to testify is left to the defendant, acting with the advice and assistance of the defendant's attorneys. You must not draw any inference of guilt from the fact that the defendant does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION NO.

In every crime or public offense there must exist a union or joint operation of act and intent.

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INSTRUCTION NO.

You have heard the testimony of \_\_\_\_\_. You will recall it was brought out that before this trial that this witness made statements concerning the subject matter of this trial. Even though these statements were not made in this courtroom they were made under oath at [e.g.: another trial.]. Because of this, you may consider these statements as if they were made at this trial and rely on them as much, or as little, as you think proper.

INSTRUCTION NO.

A defendant in a criminal action is presumed to be innocent. This presumption places upon the state the burden of proving the defendant guilty beyond a reasonable doubt. Thus, a defendant, although accused, begins the trial with a clean slate with no evidence against the defendant. If, after considering all the evidence and my instructions on the law, you have a reasonable doubt as to the defendant's guilt, you must return a verdict of not guilty.

Reasonable doubt is defined as follows: It is not mere possible doubt, because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is the state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.



INSTRUCTION NO.

Murder is the killing of a human being without legal justification or excuse and with malice aforethought.

934

INSTRUCTION NO.

In order for the defendant to be guilty of Murder, the state must prove each of the following beyond a reasonable doubt:

1. On or about the 22<sup>nd</sup> and 23<sup>rd</sup> days of September, 2007;
2. in the state of Idaho;
3. the defendant Torey Adamcik killed Cassie Stoddart;
4. that the killing was done without justification or excuse; and
5. that the killing was done with malice aforethought.

If you find that the state has failed to prove any of the above, you must find the defendant not guilty of murder. If you find that all of the above have been proven beyond a reasonable doubt, then you must find the defendant guilty of murder.

INSTRUCTION NO.

In order for the defendant to be guilty of First Degree Murder, the state must prove that the murder:

Was a willful, deliberate, and premeditated killing. Premeditation means to consider beforehand whether to kill or not to kill, and then to decide to kill. There does not have to be any appreciable period of time during which the decision to kill was considered, as long as it was reflected upon before the decision was made. A mere unconsidered and rash impulse, even though it includes an intent to kill, is not premeditation.

If the state has not proven the above special circumstance beyond a reasonable doubt, you must find the defendant not guilty of first degree murder.

936

INSTRUCTION NO.

Second Degree Murder

All murder that is not first degree murder is second degree murder.

In order for Torey Adamcik to be guilty of murder in the second degree, the State must prove:

1. that Torey Adamcik killed Cassie Stoddart;
2. that the killing was unlawful;
3. that the killing was done with malice aforethought.

INSTRUCTION NO.

IMPLIED MALICE NOT APPLICABLE TO FIRST DEGREE MURDER

Malice may not be implied in order to convict Torey Adamcik of first degree murder. In order to convict Torey Adamcik of murder in the first degree, the State must prove beyond a reasonable doubt that Torey Adamcik acted with express malice.

INSTRUCTION NO.

DEFINITION OF MALICE

Malice is the state of mind manifested by the doing of an unlawful and felonious act intentionally, deliberately, and without legal cause or excuse.

INSTRUCTION NO.

ABANDONED AND MALIGNANT HEART NOT SUFFICIENT

Because the State must prove beyond a reasonable doubt, that the Defendant acted with express malice in order to be guilty of first degree murder, you must find that the Defendant had a specific, premeditated intent to kill. The presence of an abandoned and malignant heart alone does not satisfy the State's burden.

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INSTRUCTION NO.

In order for the defendant to be guilty of Conspiracy, the state must prove each of the following:

1. On or about the 22<sup>nd</sup> or 23<sup>rd</sup> days of September, 2006;
2. in the state of Idaho;
3. the defendant Torey Adamcik and Brian Draper agreed;
4. to commit the crime of murder;
5. that Torey Adamcik intended that the crime would be committed; and
6. one of the parties to the agreement performed at least one of the following act[s]:

Overt Acts

1. On or about the 29<sup>th</sup> and/or 30<sup>th</sup> days of August, 2006, Torey Michael Adamcik, did unlawfully, willfully, deliberately, and with premeditation and malice aforethought, purchase and/or receive knives that were used in the commission of the murder of Cassie Stoddart.
2. On or about the 21<sup>st</sup> and/or 22<sup>nd</sup> days of September, 2006, Torey Michael Adamcik, did travel to the residence located at 11372 Whispering Cliffs, Pocatello, Bannock County, Idaho, with Brian Lee Draper to unlawfully, willfully, deliberately, and with premeditation and malice aforethought commit the murder of Cassie Stoddart.
3. On or about the 22<sup>nd</sup> and/or 23<sup>rd</sup> days of September, 2006, Torey Michael Adamcik did unlawfully, willfully, deliberately, and with premeditation and malice aforethought retrieve a change of clothes, mask, and murder weapons which were used in the commission of the murder of Cassie Stoddart.
4. On or about the 22<sup>nd</sup> and/or 23<sup>rd</sup> days of September, 2006, Torey Michael Adamcik did unlawfully,



willfully, deliberately, and with premeditation and malice aforethought, lie in wait in the downstairs portion of the residence located at 11372 Whispering Cliffs, Pocatello, Bannock County, Idaho in preparation of committing the murder of Cassie Stoddart.

7. and such act was done for the purpose of carrying out the agreement.

If any of the above has not been proven beyond a reasonable doubt, then you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, you must find the defendant guilty.

INSTRUCTION NO.

The state alleges the defendant was a party to an agreement to commit the crime of murder in the first degree.

You should refer to the instruction defining murder in the first degree, which is instruction number \_\_\_\_ for a definition of murder in the first degree. The State has the burden of proving that the Defendant was a party to an agreement to commit the crime of murder in the first degree beyond a reasonable doubt.

INSTRUCTION NO.

The defendant is not guilty of Conspiracy if the defendant in good faith withdrew by informing another party to the conspiracy of the defendant's withdrawal before any party performed an act for the purpose of carrying out the agreement.

INSTRUCTION NO.

The defendant contends that at the time the crime was committed, the defendant was acting under duress or coercion because the defendant was [description of duress or coercion; e.g., ordered by a person with a gun to rob the bank].

Under the law, a defendant is not guilty of a crime if the defendant committed the act or made the omission charged under threats or menaces sufficient to show that the defendant had reasonable cause to and did believe the defendant's life would be endangered if the defendant refused. On this issue, just as on all others, the burden is on the state to prove the defendant's guilt beyond a reasonable doubt. To find the defendant guilty, therefore, you must conclude beyond a reasonable doubt that when the defendant participated in the [describe offense], the defendant did not have reasonable cause to believe or did not in fact believe that the defendant's life would be endangered if the defendant refused to participate.

INSTRUCTION NO.

For the defendant to be guilty of murder in the first degree or conspiracy to commit murder in the first degree, the state must prove the defendant had a particular intent. Evidence was offered that at the time of the alleged offense the defendant was ignorant of or mistakenly believed certain facts. You should consider such evidence in determining whether the defendant had the required intent.

If from all the evidence you have a reasonable doubt whether the defendant had such intent, you must find the defendant not guilty.

INSTRUCTION NO.

I have outlined for you the rules of law applicable to this case and have told you of some of the matters which you may consider in weighing the evidence to determine the facts. In a few minutes counsel will present their closing remarks to you, and then you will retire to the jury room for your deliberations.

The arguments and statements of the attorneys are not evidence. If you remember the facts differently from the way the attorneys have stated them, you should base your decision on what you remember.

947  
The attitude and conduct of jurors at the beginning of your deliberations are important. It is rarely productive at the outset for you to make an emphatic expression of your opinion on the case or to state how you intend to vote. When you do that at the beginning, your sense of pride may be aroused, and you may hesitate to change your position even if shown that it is wrong. Remember that you are not partisans or advocates, but are judges. For you, as for me, there can be no triumph except in the ascertainment and declaration of the truth.

As jurors you have a duty to consult with one another and to deliberate before making your individual decisions. You may fully and fairly discuss among yourselves all of the evidence you have seen and heard in this courtroom about this case, together with the law that relates to this case as contained in these instructions.

During your deliberations, you each have a right to re-examine your own views and change your opinion. You should only do so if you are convinced by fair and honest discussion that your original opinion was incorrect based

upon the evidence the jury saw and heard during the trial and the law as given you in these instructions.

Consult with one another. Consider each other's views, and deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of you must decide this case for yourself; but you should do so only after a discussion and consideration of the case with your fellow jurors.

However, none of you should surrender your honest opinion as to the weight or effect of evidence or as to the innocence or guilt of the defendant because the majority of the jury feels otherwise or for the purpose of returning a unanimous verdict.

948

INSTRUCTION NO.

You have been instructed as to all the rules of law that may be necessary for you to reach a verdict. Whether some of the instructions will apply will depend upon your determination of the facts. You will disregard any instruction which applies to a state of facts which you determine does not exist. You must not conclude from the fact that an instruction has been given that the Court is expressing any opinion as to the facts.

949



INSTRUCTION NO.

The original instructions and the exhibits will be with you in the jury room. They are part of the official court record. For this reason please do not alter them or mark on them in any way.

The instructions are numbered for convenience in referring to specific instructions. There may or may not be a gap in the numbering of the instructions. If there is, you should not concern yourselves about such gap.

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INSTRUCTION NO.

Upon retiring to the jury room, select one of you as a presiding officer, who will preside over your deliberations. It is that person's duty to see that discussion is orderly; that the issues submitted for your decision are fully and fairly discussed; and that every juror has a chance to express himself or herself upon each question.

In this case, your verdict must be unanimous. When you all arrive at a verdict, the presiding officer will sign it and you will return it into open court.

951  
Your verdict in this case cannot be arrived at by chance, by lot, or by compromise.

If, after considering all of the instructions in their entirety, and after having fully discussed the evidence before you, the jury determines that it is necessary to communicate with me, you may send a note by the bailiff. You are not to reveal to me or anyone else how the jury stands until you have reached a verdict or unless you are instructed by me to do so.

A verdict form suitable to any conclusion you may reach will be submitted to you with these instructions.

INSTRUCTION NO.

952  
You have now completed your duties as jurors in this case and are discharged with the sincere thanks of this Court. The question may arise as to whether you may discuss this case with the attorneys or with anyone else. For your guidance, the Court instructs you that whether you talk to the attorneys, or to anyone else, is entirely your own decision. It is proper for you to discuss this case, if you wish to, but you are not required to do so, and you may choose not to discuss the case with anyone at all. If you choose to, you may tell them as much or as little as you like, but you should be careful to respect the privacy and feelings of your fellow jurors. Remember that they understood their deliberations to be confidential. Therefore, you should limit your comments to your own perceptions and feelings. If anyone persists in discussing the case over your objection, or becomes critical of your service, either before or after any discussion has begun, please report it to me.